In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1490

J. R. LEWIS and HAROLD H. GALLIETT, JR.,
Citizens and Taxpayers of the State of Alaska,
Appellants,

vs.

STATE OF ALASKA, GOVERNOR JAY HAMMOND,
GUY R. MARTIN, Commissioner of Natural Resources,
MICHAEL C. T. SMITH, Director of Division of Lands,
Appellees,

and

COOK INLET REGION, INC.,
Appellee by Intervention.

Appeal from the Supreme Court of Alaska

Jurisdictional Statement

RAYMOND A. NESBETT
637 West Third Avenue
Anchorage, Alaska 99501
(907) 272-9477
Counsel for Appellants

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

SUBJECT INDEX

TABLE OF AUTHORITIES

CASES

FEDERAL STATUTES

STATE STATUTES

CONSTITUTIONAL PROVISIONS

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. .....

J. R. LEWIS and HAROLD H. GALLIETT, JR.,
Citizens and Taxpayers of the State of Alaska,
Appellants,

vs.

STATE OF ALASKA, GOVERNOR JAY HAMMOND,
GUY R. MARTIN, Commissioner of Natural Resources,
MICHAEL C. T. SMITH, Director of Division of Lands,
Appellees,

and

COOK INLET REGION, INC.,
Appellee by Intervention.

Appeal from the Supreme Court of Alaska

Jurisdictional Statement

Appellants, J. R. Lewis and Harold H. Galliett, Jr., as citizens and taxpayers of the State of Alaska, appeal from the Judgment and Mandate of the Supreme Court of Alaska dated and entered January 28, 1977. Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the Appeal, and that the questions presented are substantial and warrant a plenary hearing.

OPINIONS BELOW

The Memorandum Opinion of the Superior Court, Third Judicial District at Anchorage, Alaska, was not published and is reproduced as Appendix "A" to this Statement. The Opinion of the Supreme Court of Alaska will be published, but to date has not been; ..... P.2d ....., (Alaska, 1977). This Opinion is annexed hereto as Appendix "B" to this Statement.

GROUNDS ON WHICH JURISDICTION IS INVOKED

1. Nature of the Proceeding.

Appellants brought suit in the Superior Court, Third Judicial District, Anchorage, Alaska, to enjoin the operation of a state statute purporting to authorize the conveyance away of sub- surface mineral rights to state land in conjunction with a three-party land exchange among Cook Inlet Region, Inc., a native corporation, the State of Alaska, and the federal government. Appellants were successful in the Superior Court, which declared that the state statute was in violation of the compact between Section 6(i) of the Alaska Statehood Act and the provisions of the Alaska Constitution, which compact was held to prohibit the conveyance of mineral rights without an appropriate constitutional amendment approved and ratified by the people of Alaska.

The State of Alaska and Cook Inlet Region, Inc. appealed to the Supreme Court of Alaska, and the Supreme Court of Alaska reversed, vacating the lower court's injunction. Appellants have appealed to the Supreme Court of the United States pursuant to 28 U.S.C.A. § 1257(1) and § 1257(2).

2. The Judgment Below.

The judgment and mandate of the Supreme Court of Alaska was entered on January 28, 1977. Appellants herein then moved the Supreme Court of Alaska for a stay of the mandate pending the disposition of this case by the United States Supreme Court.

A stay was signed and entered on February 23, 1977 by one of the participating justices, but this stay was subsequently vacated by the whole court upon the submission of a written agreement by Cook Inlet Region, Inc. that it would not alienate any lands involved in this litigation or remove any minerals therefrom until the proceedings in the United States Supreme Court are completed.

Appellants' Notice of Appeal was filed with the Supreme Court of Alaska on February 10, 1977, and a copy of this Notice appears as Appendix "D" to this Statement.

3. Jurisdiction of the Supreme Court.

The Supreme Court of Alaska held that Section 8(b) of the Alaska Statehood Act was invalid and did not amend the then proposed constitution of the State of Alaska. In addition, the Supreme Court of Alaska upheld the validity of Ch. 19 of the Session Laws of Alaska, 1976, which purports to convey subsurface mineral rights to state land in violation of Section 6(i) of the Alaska Statehood Act.

For the above reasons, jurisdiction over this appeal is conferred upon this Court by 28 U.S.C.A. § 1257(1) and § 1257(2). Cases believed to sustain this jurisdiction include:

Organized Village of Kake v. Egan, 369 U.S. 60 (1962);
Metlakatla Indian Community v. Egan, 369 U.S. 45 (1962);
Reconstruction Finance Corp. v. Beaver County, Pennsylvania, 328 U.S. 204 (1946)

QUESTIONS PRESENTED

1. Does the State of Alaska, under existing law and without constitutional amendment, have the right to convey away subsurface mineral rights without violating the compact formed between the people of Alaska and the United States concerning restrictions on the grants of state lands?

2. Does Ch. 19, Session Laws of Alaska, 1976, which purports to convey away sub-surface mineral rights, violate the compact between the people of Alaska and the United States?

STATEMENT OF THE CASE

The undisputed chronological sequence of events leading to the present dispute can be summarized as follows:

In 1955 the then Territory of Alaska, through its legislature, provided for a constitutional convention. Elected delegates adopted a constitution on February 5, 1956, which was ratified by the people of Alaska on April 24, 1956. This constitution adopted by the people of Alaska served as a basis for subsequent petitions to Congress for statehood and constituted an offer to accept the privileges and responsibilities of that status in accordance with the terms of said constitution.

Anticipating federal restrictions on the outright grants of lands to the new state, Article VIII, Section 9 of the Constitution of the State of Alaska provided in part as follows:

> Section 9. *Sales and Grants.* Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources.

Article XII, Section 13 of the Alaska Constitution provided as follows:

> Section 13. *Consent to Act of Admission.* All provisions of the act admitting Alaska to the Union which reserve rights or powers to the United States, *as well as those prescribing the terms or conditions of the grants of lands or other property, are consented to fully by the State and its people.* (emphasis supplied)

Two years after the people of Alaska adopted the above constitutional provisions, Congress passed the Alaska Statehood Act,

approved on July 7, 1958. Section 6(i) of the Statehood Act was a direct response by Congress to the offer contained in Article VIII, Section 9 and Article XII, Section 13 of the Alaska Constitution set forth above. The Alaska Statehood Act stated in this section:

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, ...

Section 6(i) of the Act further provided that any lands or minerals disposed of by the State of Alaska contrary to the provisions of the above section would be forfeited to the United States by appropriate proceedings instituted by the Attorney General.

In order to make sure that the people of Alaska accepted the above prohibitions on the conveyance of mineral rights as a matter of state constitutional law, the Statehood Act provided that in the statehood election the following proposition be submitted to the voters:

> (3) All provisions of the Act of Congress approved (July 1, 1958) reserving rights or powers to the United States, *as well as those prescribing the terms or conditions of the grants of lands* or other property therein made to the State of Alaska, are consented to fully by said State and its people. (emphasis supplied).

Section 8(b) of the Statehood Act provided, in addition, that:

> In the event each of the foregoing propositions is adopted at said election by a majority of the legal votes cast on submission, the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, *shall be deemed amended accordingly.* (emphasis supplied).

The people of Alaska approved the three propositions in the statehood election and by their vote on August 26, 1958, the offers contained in Article VIII, Section 9, and Article XII, Section 13 of the State Constitution, and the responsive restrictions of 6(i), became a part of the compact between the people of Alaska and the federal government concerning the grant of lands.

By Public Law 92-203, 85 Stat. 688, approved December 18, 1971, Congress enacted the Alaska Native Claims Settlement Act. This Act provided for the fair and just settlement of all claims by native groups in Alaska based upon their aboriginal land claims. All prior conveyances of public land pursuant to federal law and all tentative approvals pursuant to Section 6(g) of the Alaska Statehood Act were declared to be an extinguishment of the aboriginal title of Alaska natives. The Act further provided for 12 geographic regions within the State and for appropriate regional native corporations which were given the right to select land and share in the revenues from the sale of minerals. The Alaska Native Claims Settlement Act provided for the selection of land by each regional native corporation.

Because of existing federal withdrawals, state land selection and other non-native settlement patterns within the Cook Inlet region, Cook Inlet Region, Inc., a native corporation, was not able to select lands which it considered of like and similar character under the formula established by the Alaska Native Claims Settlement Act. For approximately three years following the enactment of this Act, Cook Inlet Region, Inc. negotiated with the Secretary of the Interior in an attempt to insure its land selection of a similar and like character.

Cook Inlet Region, Inc. was dissatisfied with these negotiations with the United States Department of the Interior, and it filed suit in the District Court. Negotiations continued, however, and the solicitor for the Department of Interior made an offer to convey to Cook Inlet Region, Inc. ten surface and 15 sub-surface

townships within the Kenai National Moose Range, including the Swanson River oilfield, as well as additional federal lands in the then Greater Anchorage Area Borough. These lands included land at Point Woronzof, Point Campbell, and a sizable portion of the Campbell air strip tract. Cook Inlet Region, Inc. declined this offer and it was later withdrawn by the Department of the Interior.

The United States District Court ruled in favor of the Secretary of the Interior and against Cook Inlet Region, Inc. in February of 1975. Pending the appeal of the case to the Ninth Circuit Court of Appeals, Cook Inlet Region, Inc. appealed to Congress for legislative relief. Despite the fact that Cook Inlet Region's problems were solely with and concerning the federal government and federal land, the State entered into the negotiations in an attempt to help solve the problems between the Cook Inlet Region and the federal government.

The State, Cook Inlet Region, Inc., and the Department of the Interior entered into the negotiations concerning the exchange of lands pursuant to Section 22(f) of the Alaska Native Claims Settlement Act which provided as follows:

> The Secretary, the Secretary of Defense, and the Secretary of Agriculture are authorized to exchange any lands or interests therein in Alaska under their jurisdiction for lands or interests therein of the Village Corporations, Regional Corporations, individuals, or the State for the purpose of effecting land consolidations or to facilitate the management or development of the land. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged.

Pursuant to the exchange provisions cited above, the State volunteered the trade of various patented lands to the Department of the Interior for exchange and grant to the Cook Inlet Region, Inc. The terms of the settlement were, in summary, that

the State of Alaska obligated itself to convey lands to the United States for exchange with Cook Inlet Region, Inc. in accordance with "Terms and Conditions for Land Consolidation and Management in Cook Inlet Area" made a part of the report from the Committee on Interior and Insular Affairs accompanying HR 6644, the amendment to the Alaska Native Claims Settlement Act. Further, Cook Inlet Region, Inc. was to dismiss its lawsuit in the case of *Cook Inlet v. Kleppe,* 75-2232, Ninth Circuit Court of Appeals; and other native village selections under Section 12 of the Settlement Act concerning lands within Lake Clark, and other areas outside the Cook Inlet Region, Inc. would be withdrawn. These terms are summarized in Section 12(a) of Public Law 94-204, known as Alaska Native Claims Settlement Act Amendments, approved January 2, 1976. Section 12(f) of the Amendments states that all conveyances of lands made or to be made by the State of Alaska in satisfaction of the Terms and Conditions "shall pass all of the State's right, title, and interest in such lands, *including the minerals therein,* as if those conveyances were made pursuant to Section 22(f) of the Settlement Act."

Section 17 of the Amendment purports to amend Section 22(f) of the Alaska Native Claims Settlement Act by stating that in any exchange made pursuant to Section 22(f), the State may convey its lands, "free of the restrictions of Section 6(i) of the Alaska Statehood Act."

In an attempt to implement Section 22(f) of the Alaska Native Claims Settlement Act, the Alaska legislature, in 1972 enacted what is now Section 38.95.060 Alaska Statutes which authorizes the exchange of state land with a native corporation "with the consent of the governor," when the purpose is to effect land consolidations or to facilitate the management or development of the land. Similar to ANCSA, Section 22(f), the Alaska Statute provided that exchanges shall be on the basis of equal value, with

either party being allowed to accept or pay cash in order to equalize the value of the properties exchanged.

The governor and the State, through its Commissioner of Natural Resources and Director of the Division of Lands, is proposing to give away large parcels of land and is also proposing to convey the subsurface mineral rights in such a manner as would convey all the coal, oil and gas resources of these lands. The State is proposing to give away the following estimated resources:

Present value of coal	$4,732,000,000.00
Minimum probable present value of oil and gas	$ 62,500,000.00
Present value of surface estate	$ 451,605,000.00
TOTAL	$5,246,105,000.00

The State proposes to receive the following estimated value as a result of the exchange:

Present value of surface estate	$ 165,917,440.00

From the above summary of the exchange values, the net result to the State of Alaska is as follows:

Net loss	$5,080,187,560.00

The Alaska legislature in March, 1976, passed Ch. 19 of the Session Laws of Alaska. This statute approved of various transfers of state lands to Cook Inlet Region, Inc., which conveyance "shall pass all of the state's right, title and interest in the land, including the mineral sub-surface estate notwithstanding any other provisions of law." This statute is annexed hereto as Appendix "E" to this Statement.

Furthermore, the above statute expressly waived the provisions of Section 38.05.125 Alaska Statutes, which section prohibits the conveyance of mineral rights belonging to the state, and further waived the provisions of Section 38.95.060(c) Alaska Statutes, which requires that all exchanges be based upon equal value.

The Superior Court, Third Judicial District at Anchorage, based upon the undisputed facts and in response to a Motion for Summary Judgment, ruled in favor of J. R. Lewis and Harold Galliett, holding that the proposed land exchange represented by Ch. 19, SLA 1976 violated the compact between the Alaska constitution and Section 6(i) of the Alaska Statehood Act; further, the Superior Court held that Ch. 19 SLA 1976 violated the equal protection and special legislation provisions of the Alaska constitution. The Memorandum Opinion of the Superior Court is annexed hereto as Appendix A to this Statement. Based upon its Declaratory Judgment as set forth above, the Superior Court issued an injunction restraining the state from participating in the proposed land exchange as authorized by the statute.

Cook Inlet Region, Inc. and the State of Alaska appealed to the Supreme Court of Alaska, which reversed the Superior Court and vacated the injunction on the grounds that (1) the state statute did not violate the equal protection and special legislation provisions of the Alaska constitution, and that (2) the state statute authorizing the proposed land exchange did not violate the statehood compact between the people of the State of Alaska and the United States concerning the restrictions upon the grants of state lands. This opinion was a 3-2 decision, and the dissenting justices filed a detailed dissenting opinion which sets forth, in substance, the arguments of appellants herein.

Appellants do not raise issues in this appeal which were ruled upon by the Supreme Court of Alaska concerning the interpretation of the Constitution of the State of Alaska as regards to the equal protection and special legislation applications to local conditions within the State of Alaska. However, that necessary portion of the Supreme Court decision which held that the statute allowing the proposed exchange did not violate the Section 6(i) and 8(b) Statehood Act compact concerning restrictions upon the grants of lands is so substantial and important that appellants are

appealing this issue for final resolution to the United States Supreme Court.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The most immediate application of the issues to be resolved herein will determine whether or not Cook Inlet Region, Inc. will be able to receive not only the surface estate, but also large amounts of coal deposits and other mineral rights in the lands proposed to be conveyed as a part of the land exchange authorized by Ch. 19 SLA 1976.

However, the determination of whether Ch. 19 SLA 1976 violates the compact between the Constitution of the State of Alaska and Section 6(i) of the Statehood Act will also determine whether other massive land exchanges already being contemplated may be effected—whether the State of Alaska at any time may convey the sub-surface mineral rights which up until now have belonged to all the people of the State of Alaska.

The immediate exchange involves valuable coal lands having an undisputed minimum present value of somewhere between $2 billion and $5 billion dollars. Once these lands are conveyed to third parties the people of the State of Alaska will forever be divested of these resources. If the State of Alaska is now allowed to convey away what is known as the Beluga coal fields, it is contemplated that the Alaska legislature will see fit to sell or give away other and more valuable mineral resources in the future.

The total economic impact of the final resolution of the issues presented in this appeal is beyond the capacity of even the most clairvoyant expert to foresee in light of the difficulty of evaluating the total present and future worth of all of Alaska's oil, gas, coal, uranium, copper and other sub-surface minerals, discovered as well as undiscovered, which presently reside within the lands of the state.

That the issues presented herein are federal issues cannot be doubted. The main controversy, as first defined in appellants' original trial court pleadings and continued through the Mandate of the Alaska Supreme Court, concerns the relationship between provisions of the Alaska constitution and Sections 6(i) and 8(b) of the Alaska Statehood Act. The Supreme Court of Alaska found that a compact does exist between the state and the United States concerning the restrictions on the grants of lands. However, the Supreme Court of Alaska divided 3-2 on whether or not a constitutional amendment ratified by the people of Alaska is necessary to change the compact to allow the conveyance away by the state of its sub-surface mineral rights.

As will be shown below, the provisions of Article VIII, Section 9, and Article XII, Section 13 of the Alaska Constitution were not the idle whims of constitutional experimentation. These sections, in conjunction with Section 6(i) and 8(b) of the Statehood Act, were absolutely necessary in order to convince the federal government that the grant of over 100 million acres of federal land to the State of Alaska would carry with it the guarantee that the mineral rights contained therein would be protected for all time in the name of the people of Alaska.

1. The Constitutional Background.

Victor Fischer sets forth in his *Alaska's Constitutional Convention,* Univ. of Alaska Press, 1975, p. 129 *et seq.*, the constitutional background to the mineral rights restrictions contained in Article VIII, Section 9 and Article XII, Section 13 of the Alaska Constitution. This background was that protection from dissipation, fraud and corruption was the primary object of the delegates. Contrary to the state's assertions in the courts below, it was not all of the constitutional convention delegates who opposed federal restraints on the management of state mineral rights. It was only

the mining interests which objected to any limitations on their rights to acquire sub-surface mineral rights from state land.

E. L. Bartlett, Alaska's territorial representative in Congress, was the keynote speaker to the Alaska Constitutional Convention. He emphasized to the delegates the need to concentrate on lands and resources above all else. Bartlett and the convention delegates were fully conscious of how the federal government, as well as older state governments, had failed to conserve and properly develop land and water resources. In his keynote speech, Bartlett stated as follows:

> This moment will be a critical one in Alaska's future history. Development must not be confused with exploitation at this time. The financial welfare of the future state and the well-being of its present and unborn citizens depend upon the wise administration and oversight of these developmental activities. Two very real dangers are present. The first, and most obvious, danger is that of exploitation under the thin disguise of development. The taking of Alaska's mineral resources without leaving some reasonable return for the support of Alaska governmental services and the use of all the people in Alaska will mean a betrayal in the administration of the people's wealth. The second danger is that outside interests, determined to stifle any development in Alaska which might compete with their activities elsewhere, will attempt to acquire great areas of Alaska's public lands in order NOT to develop them until such time as, in the omnipotence and the pursuance of their own interests, they see fit. If large areas of Alaska's patrimony are turned over to such corporations, the people of Alaska may be even more the losers than if the lands had been exploited. Fischer at p. 131.

Bartlett then emphasized that although many states included in their constitution statements to the effect that the naural resources of the state should be "developed for the benefit of the people," such pious generalities, without further concrete policy statements,

proved wholly inadequate as effective barriers against dissipation of resources, fraud, and corruption. Bartlett continued:

> Alaskans will not want, and above all else do not need, a resources policy which will prevent orderly development of the great treasures which will be theirs. But they will want, and demand, effective safeguards against the exploitation of the heritage by persons and corporations whose only aim is to skim the gravy and get out, leaving nothing that is permanent to the new state except, perhaps, a few scars in the earth which can never be healed . . . *a failure to write into fundamental law basic barriers to minimize fraud, corruption, nondevelopment, and exploitation may well be viewed fifty years from now as this Convention's greatest omission.* Fischer at p. 131 (emphasis supplied).

E. L. Bartlett explained to the convention delegates that federal policy had changed during the recent decades and that there was little chance of eliminating the alienation restriction from the Statehood Act. In order to obtain voter approval, therefore, the delegates agreed to accept as a matter of constitutional provision whatever restrictions the federal government chose to impose upon the grant of lands to the state. As pointed out by Fischer, many of the constitutional convention delegates concurred in the policy of limiting permanent disposal of minerals, and these delegates trusted that the federal government would stand firm in imposing the restrictions anticipated. Fischer, *Alaska's Constitutional Convention,* at p. 134.

Fischer then discusses the statehood bills which were then being considered in Congress, and states of these bills:

> . . . The federal grants of mineral lands to the state were being made with the express condition that all land disposals by the state contain a reservation of minerals. This meant that while the state could sell the *surface* rights to land, it would be permanently prohibited from irrevocably disposing of *mineral rights;* thus, mining properties could only be developed under lease, with the state forever retaining ownership. Fischer, at p. 134. (emphasis supplied).

Fischer then notes that "the Act admitting Alaska to statehood did contain a prohibition against disposition of minerals by methods other than leasing." Fischer, at p. 134. The constitutional background and intent of Section 6(i) and Article VIII, Section 9 and Article XII, Section 13 of the Alaska Constitution is clear. The purpose was to protect and preserve for all Alaskans, *forever,* the mineral rights and resources of the State of Alaska.

2. The Federal Restrictions Were Clear and Unequivocal.

As set forth in the Statement of the Case, supra, Alaska's congressional delegation and its constitutional delegates knew that the federal government was not about to convey over 100 million acres of federal land to the new State of Alaska without guaranteeing that the valuable mineral rights contained therein were protected against fraud and dissipation. Article VIII, Section 9 and Article XII, Section 13 of the Alaska Constitution constituted offers by the State of Alaska to abide by whatever restrictions were placed upon the grants of land contemplated in the Statehood Act bill then in Congress.

Article VIII, Section 9 of the Alaska Constitution provided that all sales or grants of state land shall contain such reservations to the state of all resources as may be required by Congress or the state. Article XII, Section 13, specifically provided that all provisions of the Statehood Act prescribing the terms or conditions of the grants of lands are consented to fully by the state *and its people.*

Congress and the Alaska constitutional delegates obviously recognized that a mere statute, such as Section 38.05.125 Alaska Statutes, prohibiting the conveyance of sub-surface mineral rights, would be ineffective to protect valuable natural resources; what the legislature can enact it also can repeal. This was precisely the

situation with Ch. 19 SLA 1976, which waived the provisions of this restriction statute.

Therefore, Congress and the Alaska constitutional delegates recognized the need to write into fundamental and constitutional law the restrictions concerning the grants of lands. Subsequent to the offers contained in Article VIII, Section 9 and Article XII, Section 13 of the Alaska constitution, Congress enacted Section 6(i) of the Alaska Statehood Act. This section provided that the grant of over 100 million acres in sub-sections (a) and (b) of Section 6 would include mineral deposits. However, this section also stated that these grants of mineral lands to the state were being made upon the "*express condition* that *all* sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the state of all of the minerals in the land so sold, granted, deeded or patented, ..." This same section provided that minerals in such lands shall be subject to lease by the state as the state legislature may direct.

Notwithstanding the existence of the compact represented by the Alaska constitutional provisions and Section 6(i) of the Statehood Act, Congress insisted upon reinforcing the binding effect of this compact between the people of Alaska and the United States by providing in the Statehood election that of three propositions to be approved by the voters, the third specifically would provide for the people to vote and approve the proposition that all provisions of the Statehood Act prescribing the terms or conditions of the grants of lands are consented to fully by said state *and its people*.

As set forth in the Statement of the Case, supra, Section 8(b) of the Statehood Act provided that in the event the above-proposition received majority approval in the statehood election, the *proposed* constitution of the *proposed* State of Alaska, *shall be deemed amended accordingly*.

It is clear that Congress intended that not only a compact be created between the state, its people, and the United States, but that said compact be incorporated within and constitute a part and parcel of the Alaska Constitution. In this manner Congress, after granting the lands and transfering fee simple to the State of Alaska, would be guaranteed that no act of the state legislature, no lobbying effort by special interest groups, nor any act of fraud or corruption could divest the people of the State of Alaska of their valuable mineral rights granted in the Statehood Act.

3. The Supreme Court of Alaska Ignored the Constitutional Nature of the Compact.

The opinion of the Supreme Court of Alaska is annexed hereto as Appendix B and will not be quoted in detail. However, in pertinent part the Supreme Court of Alaska held that Article VIII, Section 9 and Article XII, Section 13 of the Alaska Constitution do not contain constitutional restraints on alienation of mineral rights. The Supreme Court further held that Section 8(b) of the Alaska Statehood Act, which amended the *proposed* constitution of the *proposed* State of Alaska to reflect the restrictions contained in Section 6(i), was invalid and ineffective. Opinion, pp. 21-22.

The court's reasoning for the above conclusions is not supported by the constitutional history nor by the express language of Section 8(b). The Supreme Court of Alaska held that Section 8(b), in amending the proposed constitution of the proposed State of Alaska, was invalid for the reason that the Alaska Constitution was not amended in accordance with a two-thirds vote of each house of the legislature or by a Constitutional Convention as provided in Article XIII of the Alaska Constitution, dealing with amendments. The court concluded that because the Alaska Constitution was not amended by the only two ways permitted by that document, the attempt of Congress to amend

the Constitution by incorporating the provisions of Section 6(i) into it, as provided in Section 8(b), was ineffective.

The Alaska Supreme Court's reasoning ignores the express language of Section 8(b), which does not amend a viable, living constitution, but only the "*proposed* constitution of the *proposed* State of Alaska." The court's conclusion ignores the fact that Congress could have imposed any standard it wished in admitting the State of Alaska to the Union and in restricting the grants of land made so liberally at the time of statehood. The proposed constitution at the time of its amendment by 8(b) was not yet a valid effective document and could have been amended at that time by no other method than effected by 8(b), which was ratified by a vote of the people at the statehood election.

The Supreme Court's conclusion that the provisions of Section 6(i) of the Statehood Act are not a part and parcel of Alaska's constitutional law ignores constitutional history and the very careful effort on the part of Congress to guarantee that the liberal grant of lands to the state would provide the people of Alaska with a permanent fund of the minerals and resources contained therein. The State of Alaska and its people have been relying upon the restrictions contained within Section 6(i) since 1959. The State of Alaska has been receiving its grants of lands and is still in the process of selecting the remaining lands in accordance with Sections 6(a) and (b).

Appellants herein have provided ample evidence to the courts below that the State of Alaska itself during the previous 17 years since statehood has continually argued and believed that it could not convey away sub-surface mineral rights because of the Section 6(i) restrictions. This position was made known to Congress at the time of the enactment of the Alaska Native Claims Settlement Act, during which time the state argued that it could not grant an overriding royalty to the natives in absence of a constitutional amendment because to do so would be to convey a

portion of the state's sub-surface mineral rights in violation of Section 6(i) of the Alaska Statehood Act.

The Department of Interior has taken the position that the Section 6(i) restrictions were incorporated within the Alaska Constitution at the time of statehood. The Supreme Court of Alaska in *Metlakatla Indian Community v. Egan,* 362 P.2d 901 (Alaska, 1961), took the position that any federal amendment, alone, to the Alaska Statehood Act could form no part of the compact between Alaska and the United States, which compact was effective upon approval of the terms of the Alaska Statehood Act by the voters of Alaska. 362 P.2d at 909-911.

The position of appellants herein in the courts below is set forth in the dissenting opinion of the Supreme Court of Alaska and will not now be reargued in detail. It will suffice to state at this time that there would have been no reason for Congress to provide for ratification of the Section 6(i) restrictions by the people of Alaska, and requiring that these restrictions be made a part of the proposed constitution of the proposed State of Alaska, if Congress had intended at the time of statehood that a mere act of the Alaska legislature could undo all that it had carefully created in the way of a federal-state compact at the time of statehood.

The conclusion of the Supreme Court of Alaska, Opinion at p. 23, that the congressional restraints on the grants of lands were intended by Congress to be binding "only to the extent required by that body," also ignores the congressional intent that the beneficiaries of the federal-state compact were the *people of the State of Alaska, not the federal government.*

4. Conclusion.

The above summary of the issue presented in this appeal clearly indicates that it involves literally billions of dollars in discovered and undiscovered sub-surface mineral rights. The

resolution of the issues presented in this appeal will determine whether or not the people of Alaska will be protected in their rights to the sub-surface minerals, or whether an act of the state legislature, compelled by vested interests, lobbying efforts or the expediency of party politics, will deprive the present and future generations of Alaskans of the permanent fund represented by their mineral rights granted at statehood.

The statutory scheme of the proposed land exchange represented by Ch. 19 SLA 1976 does not even require that the state receive equal value for its sub-surface mineral rights. To allow the conveyance of these mineral rights in conjunction with the present exchange, which also opens the door to future similar land transactions, not only forever deprives the people of their undiscovered mineral rights, but deprives the people of the State of Alaska of even the present fair market value of those discovered minerals which are to be immediately conveyed.

It is submitted on behalf of appellants that the above issues relating to the restrictions upon the grants of lands set forth in Section 6(i) of the Alaska Statehood Act are substantial federal issues and justify a plenary hearing by the Supreme Court of the United States.

Respectfully submitted,

RAYMOND A. NESBETT
637 West Third Avenue
Anchorage, Alaska 99501

Counsel for Appellants J. R. Lewis and Harold H. Galliett, Jr., as citizens and taxpayers of the State of Alaska.

(Appendices Follow)

Appendix A

In the Superior Court for the State of Alaska
Third Judicial District

J. R. Lewis and Harold H. Galliett, Jr., Citizens and Taxpayers of the State of Alaska,

Plaintiffs,

vs

State of Alaska; Governor Jay Hammond; Guy R. Martin, Commissioner of Natural Resources; Michael C. T. Smith, Director, Division of Lands,

Defendants.

CIVIL ACTION 76-1608

DECISION

This case deals with the issues of whether or not the act relating to the Cook Inlet Region Inc., land exchange—Chapter 19, Session Laws of Alaska 1976, passed March 11, 1976 is legislation violative of the Alaska Constitution. It was stipulated by all parties that there are no facts in controversy. The Plaintiff brought a motion for a preliminary injunction, and the State brought a motion for Summary Judgment. Procedurally, the Court will hear the Plaintiffs request for injunctive relief as a cross motion for Summary Judgment as well, to dispose of the legal issues involved.

Plaintiffs appeared through their counsel RAY NESBETT, Defendant State of Alaska through Assistant Attorney General JAMES REEVES and Defendant-Intervenor Cook Inlet Region, Inc., through it's counsel ALAN McGRATH.

By recent action of the U.S. Congress—(Section 12 of Public Law 94-204, June 7, 1976) and the action of the Alaska Legislature by CSHB 784, an attempt was made to effectuate a tri-parte land exchange between the two governmental agencies and the Cook Inlet Region, Inc. The Defendant contends that the legislative act surrounding the exchange are constitutional and the com-

pact would resolve serious title problems in the Anchorage-Cook Inlet area. Plaintiff's contend that the exchange is unconstitutional and amounts to a give away of subsurface mineral interest owned by all of the people of the State.

Prepared Findings of Fact and Conclusions of Law are incorporated in this decision by reference.

At Issue: Does CSHB 784, insofar as it attempts to convey subsurface mineral rights in State lands, violate the Constitution of Alaska?

The Constitution of Alaska was adopted on February 5, 1956 and ratified by the People on April 24, 1956. Included in the ratified Constitution was Article VIII which dealt with Natural Resources. Section 9 of Article VIII of the Constitution provides as follows:

> Section 9. *Sales and Grants.* Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources.

On July 7, 1958, the Statehood Act was approved by the U.S. Congress and was ratified by the voters of Alaska on August 26, 1958. Upon ratification of the Statehood Act by the people of Alaska, certain restrictions and conditions were placed upon the alienation of mineral rights on State Lands. Sec. 6(i) of the Statehood Act states:

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, ...; provided that any lands or minerals hereafter disposed

> of contrary to the provisions of this section shall be forfeited to the U.S. . . . .

Section 8(b)(3) of the Statehood Act provides that:

> All provisions of the Act of Congress approved (date of approval of the Statehood Act) reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people.
>
> In the event each of the foregoing propositions (grants of land restrictions approval by majority vote in statehood election) is adopted at said election by a majority of the legal votes cast on submission, the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, *shall be deemed amended accordingly.* (Emphasis supplied).

Argument was given that the Statehood Act was not part of the Constitution of Alaska, thus sections 6(i) and 8(b) are not applicable to this case. It is irrelevant whether the Statehood Act amends or incorporated by reference into the Constitution. The simple fact is that both the Alaska Constitution and the Statehood Act are irrevocably intertwined and must be considered together.

The people of the State of Alaska knew what they were doing when they voted to accept future Federal Land grants subject to the condition that the mineral rights therein would be retained by the State for the benefit of all Alaskas' people. Furthermore, the only way the State can be divested of these mineral rights is by constitutional amendment approved by the people.

Accordingly, this Court concludes that CSHB 784, insofar as it attempts to convey away mineral subsurface rights without the approval of Alaskas' people, is violative of Article VIII § 9 of Alaskas' Constitution.

Issue II: Is CSHB 784 violative of Article II § 19 of the Constitution, because it creates special and local legislation, without justification?

CSHB 784 (3) by its own language waives the provisions of AS 38.05.125 and AS 38.95.060(c), which is general legislation. Such a waiver necessarily creates "special legislation". It is also "local" because it operates only in a limited geographical area (Cook Inlet) rather than on a statewide geographical area.[1] The fact that the legislation arguably has statewide significance is not sufficient to take it without the realm of being local. In short, the subject legislation is special and local in nature.

Furthermore, CSHB 784 is not otherwise permissible legislation because general acts are applicable and there are no persuasive justifications for departing from general law.

The Court finds CSHB 784 Special Legislation without justification, thus violative of article II § 19 of the Alaska Constitution.

The Court concludes that in view of the premises that CSHB 784 is violative of both Article VIII § 9 and Article II § 19 of the Alaska Constitution, the motion for Summary Judgment by the State and joined by the defendant Intervenor is thus denied. Judgment is given to the plaintiff; granting their motion to permanently enjoin the State of Alaska from selling, exchanging, conveying, or otherwise alienating subsurface mineral rights on State Lands, unless and until such action is approved by a proper vote of the people by constitutional amendment.

DATED at Anchorage, Alaska, this 28th day of June, 1976.

C. J. OCCHIPINTI
C. J. Occhipinti
Superior Court Judge

The foregoing decision was delivered to
counsel of record as noted below.
JO ANN MINGO
Jo Ann Mingo, Secretary
Raymond A. Nesbett, Esq.
James Reeves, Esq.
Alan McGrath, Esq.

1. Abrams v. State of Alaska, Jordan; 534 P2nd 91.

In the Superior Court for the State of Alaska
Third Judicial District

J. R. Lewis and Harold H. Galliett, Jr., Citizens and Taxpayers of the State of Alaska,
Plaintiffs,
vs
State of Alaska; Governor Jay Hammond; Guy R. Martin, Commissioner of Natural Resources; Michael C. T. Smith, Director, Division of Lands,
Defendants.

CIVIL ACTION 76-1608

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for hearing on plaintiffs' motion for preliminary injunction. Subsequent to the setting of this hearing, defendant, STATE OF ALASKA, filed a motion for summary judgment which was concurred in by COOK INLET REGION, INC. Plaintiffs filed opposition to the motion for summary judgment, and at the hearing, counsel for all parties stipulated that the Court should decide this matter based on the memoranda and exhibits submitted for the reason that there were no disputed issues of material facts and that the motion for summary judgment and plaintiffs' motion for injunction were dispositive of all issues without the necessity of a trial.

At the hearing on the above motions, ALLEN McGRATH appeared, for GRAHAM & JONES, INC., representing COOK INLET REGION, INC.; JAMES REEVES appeared on behalf of the STATE OF ALASKA; and RAYMOND A. NESBETT appeared on behalf of plaintiffs.

This Court has read and considered the lengthy memoranda and exhibits submitted by the parties. Based on the authorities and arguments presented therein, this court makes the following:

FINDINGS OF FACT

1. In 1955 the then Territory of Alaska, through its legislature, provided for a constitutional convention. Elected delegates adopted a constitution on February 5, 1956 which was ratified by the people of Alaska on April 24, 1956. This constitution adopted by the people of Alaska served as a basis for subsequent petitions to Congress for statehood and constituted an offer to accept the privileges and responsibilities of that status in accordance with the terms of said constitution.

2. Prior to and during the adoption of the Alaska Constitution, there was public conroversy surrounding the protection of the State's mineral resources. The mining interests wanted no restrictions on the acquisition of subsurface minerals, while the opponents wanted the mineral rights of the new state to be reserved for the benefit of all the people of the state forever.

3. The convention delegates knew that the grant of substantial federal lands to the State would contain some kind of restriction on the alienation of mineral rights. The delegates knew that the State would have to agree to these restrictions in order to obtain its grants of land; however, to placate the vested interests, the delegates drafted Article VIII, Section 9 of the proposed constitution in such a way as to show that any federal restrictions agreed to by the State were instigated by the United States rather than by the State itself.

4. Article VIII, Section 9 of the Constitution of the State of Alaska provided in part as follows:

> Section 9. *Sales and Grants.* Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress of the State and shall provide for access to these resources.

5. Two years after the people of Alaska adopted the above constitutional provisions, Congress passed the Alaska Statehood Act, approved on July 7, 1958. Sec. 6(i) of the Statehood act is a direct response by Congress to the provisions contained in Article VIII, Sec. 9 of the Alaska Constitution set forth above. The Alaska Statehood Act stated in this section as follows:

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, ...

Section 6(i) of the Act further provided that any lands or minerals disposed of by the State of Alaska contrary to the provisions of the above section would be forfeited to the United States by appropriate proceedings instituted by the Attorney General.

6. Sec. 8(b) of the Statehood Act provided in addition, that:

> In the event each of the foregoing propositions (grants of land restrictions approval by majority vote in statehood election) is adopted at said election by a majority of the legal votes cast on submission, the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, *shall be deemed amended accordingly*. (Emphasis supplied).

7. In order to confirm that the grants of mineral lands to the new state would be subject to the 6(i) restrictions, the United States required that in the statehood election of August 26, 1958, the following proposition be submitted to the voters of Alaska:

> Sec 8(b)(3). All provisions of the Act of Congress approved (date of approval of the Statehood Act) reserving rights or

> powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people.

8. The above proposition was approved by the citizens of Alaska by a vote of 40,739 to 7,500 on August 26, 1958.

9. This court finds that the people of Alaska, as specifically set forth in the above proposition, agreed to accept all provisions of the Statehood Act pertaining to the grants of lands. The people of Alaska knew full well that they were accepting future federal land grants subject to the condition that the minerals contained therein would be retained by the State for the benefit of the people of Alaska.

10. The drafters of Article VIII, Sec. 9, Alaska Constitution, intended therein that the federal restrictions pertaining to alienation of mineral rights be accepted by the State as a matter of constitutional law. The federal government, in Section 8(b) of the Statehood Act, also intended that the Sec. 6(i) restrictions be accepted by the State as a matter of constitutional law.

11. Article VIII, Section 9, Alaska Constitution and Sections 6(i) and 8(b), Statehood Act, reflect the concern of the drafters of both documents that mere general policy statements and statutes were not enough to protect Alaska's valuable natural resources against encroachment by vested interests, lobby groups and the pressure of political expediency. The drafters of the Alaska Statehood Act and Constitution intended that the mineral rights of the State remain with the people by express constitutional requirement, which could only be changed by constitutional amendment approved by a vote of the citizens of Alaska.

12. On or about March 11, 1976, the Alaska legislature passed Committee Substitute for House Bill No. 784. This bill authorized the governor to convey to the United States for the benefit of COOK INLET REGION, INC., large amounts of land, in

excess of ½ million acres, which land contains up to 2-5 billion dollars in coal reserves. The exact value of these or other mineral resources is immaterial inasmuch as all parties have agreed that the lands to be conveyed by the State in the proposed exchange do contain substantial mineral deposits.

13. Sec. 2 of CSHB 784 states in part:

> The conveyance shall pass all the state's right, title and interest in the land, including the mineral subsurface estate, notwithstanding any other provisions of law.

The Act further states in Sec. 3: "The provisions of A.S. 38.05.125 and 38.95.060(c) do not apply to a conveyance made under this Act.

14. CSHB 784 purports to waive "provisions of law" prohibiting the conveyance of the State's mineral rights. The Act purports to waive A.S. 38.05.125, which requires the State to reserve and retain the mineral rights in sales and leases of state land. The Act purports to waive A.S. 38.95.060(c) which requires that exchanges of land with native corporations be on the basis of equal value.

15. CSHB 784 is in violation of Article VIII, Sec. 9, Alaska Constitution, because it attempts to convey away mineral rights belonging to all the people of the State. In absence of a constitutional amendment approved by the citizens of Alaska, the State's subsurface mineral rights are reserved to all of the people of the State and may not alienated in any manner.

16. CSHB 784 is also in violation of Article II, Sec. 19, Alaska Constitution, because it attempts to waive the effect and operation of general legislation without justification.

17. Because CSHB 784 and the proposed exchange violates the Alaska Constitution in two material respects, the State should be restrained from conveying away the mineral rights as proposed and authorized by this statute.

18. Based on the above undisputed facts, the State's motion for summary judgment should be denied and plaintiffs should

be granted the injunctive relief requested, awarding Plaintiffs their costs and attorney fees.

CONCLUSIONS OF LAW

1. CSHB 784 is in violation of Article VIII, Sec. 9, Alaska Constitution, because it attempts to convey away mineral rights belonging to all the people of the State. In absence of a constitutional amendment approved by the citizens of Alaska, the State's subsurface mineral rights are reserved to all of the people of the State and may not be alienated in any manner.

2. CSHB 784 is also in violation of Article II, Sec. 19, Alaska Constitution, because it attempts to waive the effect and operation of general legislation without justification.

3. Because of the above violations, the State shall be restrained from conveying away the mineral rights as proposed and authorized by CSHB 784.

4. Judgment shall be entered permanently enjoining defendants from selling, exchanging, conveying or in any manner alienating subsurface mineral rights belonging to the people of Alaska.

5. Plaintiffs are entitled to reasonable costs and attorney fees.

DATED at Anchorage, Alaska, this 28 day of June, 1976.

C. J. OCCHIPINTI
C. J. Occhipinti
Superior Court Judge

The foregoing Findings of Fact and
Conclusions of law were delivered to
counsel of record as noted below.
JO ANN MINGO
Jo Ann Mingo, Secretary
Raymond A. Nesbett, Esq.
James Reeves, Esq.
Alan McGrath, Esq.

Appendix B

The Supreme Court of the State of Alaska

File No. 3039

State of Alaska, Governor Jay Hammond, Guy R. Martin, Commissioner of Natural Resources, Michael C. T. Smith, Director of Division of Lands,
Appellants,
and
Cook Inlet Region, Inc.,
Appellant by Intervention,
vs.
J. R. Lewis and Harold H. Galliett, Jr., Citizens and Taxpayers of the State of Alaska,
Appellees.

OPINION

[No. 1364—January 18, 1977]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, C. J. Occhipinti, Judge

Appearances: James N. Reeves, Assistant Attorney General, Anchorage, and Avrum M. Gross, Attorney General, Juneau, for Appellant State of Alaska. Allen McGrath and John R. Snodgrass, Jr., Graham & James, Anchorage, for Appellant Cook Inlet Region, Inc. Raymond A. Nesbett, Anchorage, for Appellees.

Before: Boochever, Chief Justice, Rabinowitz, Connor, Erwin and Burke, Justices.

BOOCHEVER, Chief Justice.

RABINOWITZ, Justice, Dissenting, with whom ERWIN, Justice, Joins.

BURKE, Dissenting in Part.

In this appeal we are asked to resolve difficult state constitutional issues involving a three-way exchange of land between the State of Alaska, the United States Government and the Cook Inlet Region, Inc. (Cook), a regional corporation of Alaska Natives organized under the Alaska Native Claims Settlement Act of 1971. The issue before this court is whether the Alaska statute, Chapter 19, SLA 1976, authorizing the exchange violates state constitutional prohibitions against alienation of mineral rights in state lands and enactment of local and special acts. The state and Cook further raise issues as to the standing of the plaintiffs, and the failure to join the United States of America as an indispensable party.[1] The superior court held that the statute authorizing the land exchange was unconstitutional. The state and Cook have appealed. We reverse the trial court's ruling and find that Chapter 19, SLA 1976 authorizing the land exchange is constitutional.

FACTS

In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA)[2] with the goal of providing a fair and just settlement of all aboriginal land claims by Native groups in

1. In view of the result reached, we do not pass on the contention that the United States is an indispensable party. For cases where the indispensable party argument was raised but not decided by the court, *see* Schraier v. Hickel, 419 F.2d 663, 668 n.13 (D.C. Cir. 1969); Miller v. Udall, 307 F.2d 676, 678 n.2 (D.C. Cir. 1962); Safarik v. Udall, 304 F.2d 944, 950 (D.C. Cir. 1962). *See also* Pan American World Airways, Inc. v. CAB, 392 F.2d 483, 486 n.4 (D.C. Cir. 1968).

2. 43 U.S.C. § 1601 *et seq.* Public Law 92-203, 85 Stat. 688 approved December 18, 1971.

Alaska. Twelve regional Native corporations were established and given the right to select land and share in revenues derived from the sale of minerals. In most of the state, this mechanism worked reasonably well. Within the Cook Inlet Region, however, severe difficulties arose. Existing federal withdrawals, state land selections and other non-Native settlement patterns denied Cook the freedom of selection experienced by other regional corporations. For approximately three years following ANCSA's enactment, Cook negotiated with the Secretary of the Interior over the matter of land selection rights and finally brought the matter before the Federal District Court.[3] While Cook was unsuccessful in District Court, an appeal is now pending. Should Cook prevail on appeal, Cook's action could, in effect, require the United States to challenge the validity of prior state land selections and attempt to recover title to those lands, in order to make land available for selection by Cook.

Pending its appeal in the United States Court of Appeals for the Ninth Circuit, Cook sought legislative relief in Congress. The state, Cook and the Department of the Interior entered into negotiations concerning the exchange of land pursuant to Sec. 22(f) of the ANCSA[4] resulting in an agreement[5] whereby the

3. *See* Cook Inlet Region, Inc. v. Morton, D. Alaska No. A-40-73 Civil (unreported memorandum decision of February 20, 1975), *appeal docketed, sub nom.* Cook Inlet Region, Inc. v. Kleppe (No. 75-2232, 9th Cir.).

4. Sec. 22(f) of the Alaska Native Claims Settlement Act provides:
> The Secretary, the Secretary of Defense, and the Secretary of Agriculture are authorized to exchange any lands or interests therein in Alaska under their jurisdiction for lands or interests therein of the Village Corporations, Regional Corporations, individuals, or the State for the purpose of effecting land consolidations or to facilitate the management or development of the land. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged.

5. The agreement entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, December 10, 1975" is set out in the House of Representatives Report No. 74-729, 94th Congress, First Session.

state was to relinquish lands, including the subsurface minerals therein, to the United States in order to augment the federal holdings from which the Native corporations will obtain their entitlements. For purposes of this transaction, Congress expressly waived the restrictions on alienation of minerals contained in Sec. 6(i) of the Statehood Act, P.L. 94-204 Sec. 17, 94th Congress, First Session. For its relinquishment of certain state lands to the United States, the state would receive approximately two and a half times as many acres of federal lands located elsewhere, plus various other elements of consideration including four public purpose tracts in the Anchorage area, improved selection rights statewide and a greater role in determining where Cook Inlet's land selections may occur. The Act becomes effective only if: (1) Alaska irrevocably committed itself to the land transfer before March 26, 1976, (2) Cook withdraws with prejudice from the Ninth Circuit case and (3) Cook irrevocably withdraws from and waives all of its existing rights in certain lands.

The Alaska Legislature passed Chapter 19, SLA 1976 authorizing the Governor to convey the designated state lands to the federal government in accordance with the agreement. The conveyance was to pass all of the state's rights in the land including the mineral subsurface estate. Section (3) of the Act waives the provisions of AS 38.05.125 restricting the state's right to alienate minerals and AS 38.95.060 authorizing exchanges of land with Native corporations on the basis of equal value.

The plaintiffs below brought suit questioning the validity of legislative or executive consent to the exchange. On June 28, 1976, the trial court enjoined the prospective transfer.

I. PLAINTIFFS' STANDING TO SUE[6]

In the past, this court has liberally construed the judicial limitation of standing and has favored increased accessibility to the courts.[7] We have not, however, specifically considered whether a taxpayer without a direct financial stake in a particular government expenditure or a citizen who suffers no economic loss has standing to vindicate the public interest.[8] Although in many respects this case is a typical taxpayer or citizen action, we do not now decide whether our liberal interpretation should be extended to permit standing in all such units. We hold only that under

---

6. The issue of standing was raised by the defendants in the trial court and on summary judgment motion and is further argued in the briefs. The points of appeal, however, make only general reference to the "denial of summary judgment" with no specific mention of standing. Since the trial court and all counsel knew the issue was contested and it is argued in the briefs, we will review the question. *See* Jager v. State, 537 P.2d 1100, 1103 (Alaska 1975). Our decision to do so, however, should not be read to encourage or condone such departures from the precision required by Appellate Rule 9(e).

7. *See* Moore v. State, 553 P.2d 8, 23-25 (Alaska 1976); Wagstaff v. Superior Court, Family Court Division, 535 P.2d 1220, 1225-26 (Alaska 1975); Coghill v. Boucher, 511 P.2d 1297, 1299 (Alaska 1973); United States Smelt. Ref. & Mining Co. v. Local Bound. Comm'n, 489 P.2d 140, 142 (Alaska 1971); K & L Distributors, Inc. v. Murkowski, 486 P.2d 315, 353-54 (Alaska 1971); Alyeska Ski Corporation v. Holdsworth, 426 P.2d 1006, 1008 (Alaska 1967).

8. For a comprehensive background on the development and expansion of the standing doctrine, *see* Flast v. Cohen, 392 U.S. 83, 20 L. Ed. 2d 947 (1968), and the many authorities and law review articles cited therein. For cases not adopting this expansive view, *see* Warth v. Seldin, 442 U.S. 490, 45 L. Ed. 2d 343 (1975); Schlesinger v. Reservist Committee to Stop the War, 418 U.S. 208, 41 L. Ed. 2d 706 (1974).

As stated by Justice Douglas in Flast v. Cohen, 392 U.S. at 108, n.4, 20 L. Ed. 2d at 966-67 n.4 (concurring opinion):

> The estimates of commentators as to how many jurisdictions have specifically upheld taxpayers' suits range from 32 to 40. See generally, 3 K. Davis, Administrative Law Treatise § 22.09 1958 §§ 22.09-22.10 (1965 Supp.); Jaffe, Standing To Secure Judicial Review: Public Actions, 74 Harv. L. R. 1265, 1276-81 (1961); Comment, Taxpayers' Suits: A Survey and Summary, 69 Yale L.J. 895 (1960); St. Clair v. Yonkers Raceway, 13 NY2d 77-81, 242 NYS2d, 45-49, 192 NE2d 15, 16-19 (1963) (dissenting opinion of Fuld, J.).

the particular facts involved here,[9] plaintiffs have alleged a sufficient personal stake in the outcome of the controversy to guarantee "the adversity which is fundamental to judicial proceedings".[10]

Looking to the allegations of the complaint, we find several factors which, viewed together, mandate our conclusion. The land transfer allegedly violates two specific constitutional limitations: the restraints on the alienation of mineral resources[11] and the restriction on local and special legislation.[12] Moreover, the complaint underscores the magnitude of the transaction and its potential economic impact on the state. Plaintiffs have claimed that participation in the land transfer will result in losses to the state treasury and the taxpayers of vast sums of money.

The alleged injury here involves more than economic injury. Like the Supreme Court in *United States v. SCRAP,* 412 U.S. 669, 686, 37 L. Ed. 2d 254, 269 (1973), and *Sierra Club v. Morton,* 405 U.S. 727, 734, 31 L. Ed. 2d 636, 643 (1972), we are inclined to recognize that harm to non-traditional and intangible interests

9. As stated in Flast v. Cohen, 392 U.S. 83, 101, 20 L. Ed. 2d 942, 962 (1968):

> A taxpayer may or may not have the requisite personal stake in the outcome, depending on the circumstances of the partciular case.

10. In Moore v. State, 553 P.2d 8, 23 (Alaska 1976), we explained:

> Whether a party has standing to obtain judicial resolution of a controversy depends on whether the party has a sufficient personal stake in the outcome of the controversy. In our recent decision of *Wagstaff v. Superior Court, Family Division,* 535 P.2d 1220, 1225 (Alaska 1975), we described this requirement in terms of "injury in fact," and explained that its purpose is to assure the adversity which is fundamental to judicial proceedings. (footnotes omitted)

11. Alaska Constitution, Art. VIII, Sec. 9; Alaska Statehood Act, Public Law 85-508, Sec. 6(i).

12. Alaska Constitution, Art. II, Sec. 19. On appeal, the issue of standing was argued only with respect to the prohibitions of Sec. 6(i) and Art. VIII, Sec. 9. We have considered cases involving Art. II, Sec. 19 in which the issue of standing has not been raised. Abrams v. State, 534 P.2d 91 (Alaska 1975); Boucher v. Engstrom, 528 P.2d 456 (Alaska 1974).

may be sufficient to create an "injury in fact".[13] Here, plaintiffs are seeking to protect mineral resources in land originally selected from the federal government under the Statehood Act. Their interest in the state's retention of mineral rights in state lands is no less significant than the aesthetic and environmental values sought to be vindicated in *Sierra Club* and *SCRAP.*

Finally, although the requisite injury cannot be created merely by the absence of a more appropriate plaintiff,[14] we note that there is no one in a better position to complain of the constitutional violations alleged here. As we stated in *K & L Distributors, Inc. v. Murkowski,* 486 P.2d 351, 354 (Alaska 1971), in a slightly different context:

> [n]o one has a greater interest in the outcome [of the case] than appellants, and if they cannot raise the issue, it is unlikely that the issue will be raised.

While the governor and the attorney general are generally charged with protecting the public interest,[15] their position in this controversy is clearly adverse to that represented by plaintiffs.

In view of the totality of the circumstances and the strong policy favoring review of alleged specific constitutional violations

13. *See Wagstaff,* 535 P.2d at 1225 n.7 where, considering an attorney's right to represent a minor, we quoted Professor Davis who states:

> "The basic idea that comes out in numerous cases is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation." Davis, Standing: Taxpayers and Others, 35 U. Chi. L. Rev. 601, 613.

14. *See* Schlesinger v. Reservists to Stop the War, 418 U.S. 208, 227, 41 L. Ed. 2d 706, 722 (1974); United States v. Richardson, 418 U.S. 166, 179, 41 L. Ed. 2d 678, 689 (1974).

15. Art. III, Sec. 16 of the Alaska Constitution provides:

> *Governor's Authority.* The governor shall be responsible for the faithful execution of the laws. He may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions. This authority shall not be construed to authorize any action or proceeding against the legislature.

Neither party has drawn attention to this provision of the Alaska Consti-

by state officials,[16] we find it appropriate to reach the merits of this controversy.

II. THE CONSTITUTIONALITY OF THE PROPOSED TRANSFER OF MINERAL RIGHTS

In 1955, the Territory of Alaska, through its legislature, provided for a constitutional convention.[17] Elected delegates adopted a Constitution on February 5, 1956, which was ratified by the people of Alaska on April 24, 1956. This Constitution adopted by the people of Alaska served as the basis for subsequent petitions to Congress for statehood and constituted an offer to accept the privileges and responsibilities of that status in accordance with its terms.[18]

Throughout the process of drafting the Constitution and its adoption, there was considerable public controversy surrounding the issue of federal control over Alaska's power to dispose of its mineral resources. In statehood legislation for other states, Congress had limited land grants to non-mineral lands. Public

tution. As stated by Justice Rabinowitz in Alyeska Ski Corporation v. Holdsworth, 426 P.2d at 1013-14 n.28:

> None of the briefs before us make any reference to this provision of our constitution and to its possible impact on the standing issue in the case at bar. In such circumstances we will await a more appropriate occasion to interpret this portion of Alaska's constitution.

16. *See, e.g.,* United States Smelt., Ref. & Mining Co. v. Local Bound. Comm'n, 489 P.2d 140, 143 (Alaska 1971).

17. The historical discussion in this opinion is drawn from the following sources: V. Fischer, Alaska's Constitutional Convention (Anchorage, Univ. of Alaska Press, 1975); C. Naske, An Interpretative History of Alaskan Statehood (Alaska Northwest Publishing Co., 1973); C. Naske, "103,350,000 Acres," II Alaska Journal 2 (Autumn 1972); Alaska Constitutional Convention Proceedings (Juneau, Alaska Legislative Council); I Public Administration Service, Constitutional Studies 44-70.

18. Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901, 909 (Alaska 1961), *rev'd on other grounds, sub nom.,* Metlakatla Indian Community v. Egan, 369 U.S. 45, 7 L. Ed. 2d 562 (1962); and Organized Village of Kake v. Egan, 369 U.S. 60, 7 L. Ed. 2d 573 (1962), *aff'd in part, sub nom.*

lands, which were known to be chiefly valuable for commercial mineral production at the time of the grants, were retained in federal ownership for management and disposition under a theoretically unified system of federal mineral law. In part to avoid the litigation over titles which had resulted from this policy,[19] Congress passed the School Lands Act of 1927, 43 U.S.C. § 870. This act extended the original statehood land grants to embrace lands mineral in character. These additional grants, however, were made subject to a mineral alienation condition which prohibited state disposal of land without a reservation of minerals and permitted a forfeiture action instituted by the Attorney General on behalf of the United States in the event of such disposal [43 U.S.C. § 870(b)].

Although the constitutions of most states were written after passage by Congress of the relevant enabling acts, Alaska's Constitution was drafted in the absence of a pre-existing act. While the delegates were therefore unsure of the particular restrictive language which might be chosen by Congress, they were aware of the history of federal control over state disposition of mineral lands and the likelihood that the United States would insist on retaining its usual powers. To many of the delegates and the people of the state, these restrictions were unpopular.[20]

19. *See, e.g.,* Wyoming v. United States, 255 U.S. 489, 65 L. Ed. 742 (1921); United States v. Sweet, 245 U.S. 563, 62 L. Ed. 2d 473 (1918); Deffeback v. Hawke, 115 U.S. 392, 29 L. Ed. 423 (1885).

20. *See* Alaska Constitutional Convention Proceedings, at 3001 and 3062. For example, Delegate White of the Committee on Resources told the convention:

> of all the hundreds of people I have talked to about . . . [the mineral alienation provision in the enabling act under consideration by Congress], . . . I can count on something less than one hand those who like the requirement that the state will have to retain title to its minerals and may only lease them.

4 Alaska Constitutional Convention Proceedings at 3001. He later explained that the provision was:

> far and away the most unpopular among the people of Alaska and not necessarily just among the mining industry. It is unpopular among the homesteaders, the man in the street and everyone I have talked to. . . .

Id. at 3062.

On the other hand, the need to protect the resources of the state against exploitation and the pressure of special interest groups was emphasized at the outset of the convention in an address by E. L. Bartlett, at that time Alaska's Delegate to Congress.[21] A suggested provision on natural resources drafted by the Public Administration Services, a national consulting organization retained to provide research services to the Alaska Statehood Committee, would have required a reservation to the state of all the minerals in lands sold, granted, deeded or patented by the state.[22] In drafting the provision, which became Act VIII, Sec. 9, however, the delegates rejected the view that absolute restraints on alienation of mineral rights should be made an affirmative part of the Constitution. Instead, they provided that:

> . . . All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservation of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damage.[23]

The delegates thus clearly elected not to include specific restrictions on alienation of mineral rights in the Constitution. Had they intended that such restrictions be constitutionally mandated, it would have been a simple matter to spell them out in the same careful manner as were so many other provisions of the Constitution. It is without dispute that a state in its constitution may impose more stringent restrictions on the disposal of state lands than those required by Congress. In fact, there is no federal requirement that a state dispose of its land at all. In the event

21. *See,* Fischer, *supra* at 134. Mr. Bartlett later served with distinction as senior United States Senator for Alaska.

22. P.A.S. Proposal, Vol. 1, at 59, Alaska Constitutional Convention Proceedings. Provision was made for alienating mineral rights by general law in the case of homesteads and lesser acreage.

23. Art. VIII, Sec. 9, Alaska Constitution.

that the delegates were concerned that specific restrictions drafted into the Constitution might not satisfy Congressional requirements for Alaska's admission to the Union, a provision could have been added calling for such additional restrictions as might be required by Congress.

What we have said with reference to Art. VIII, Sec. 9 applies with equal force to the provisions of Art. XII, Sec. 13, which specifies:

> All provisions of the act admitting Alaska to the Union which reserve rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property, are consented to fully by the State and its people.

No specific limitations to mineral alienation were set forth in the Constitution by this provision. Nor were any terms or conditions incorporated by reference to an existing statute or code since the Statehood Act was yet to be enacted by Congress. Art. XII, Sec. 13 is similar to Art. VIII, Sec. 9 in expressing advance consent to terms or conditions which might be required by Congress as a condition to admission of Alaska to the Union. It did not, however, embed any particular restrictions into the state Constitution.

While we believe there can be no serious question as to the intent of the delegates in drafting Art. VIII, Sec. 9, we are cognizant that a state constitution differs from a legislative act. In construing a legislative act, we need only look to the intent of the members who enacted it. A constitutional provision, however, must be ratified by the voters, and it is therefore also necessary to look to the meaning that the voters would have placed on its provisions.[24] While voters were probably not privy to the

24. People *ex rel.* Watseka Telephone Co. v. Emmerson, 134 N.E. 707 (Ill. 1922); State *ex rel.* Heimberger v. Board of Curators, 188 S.W. 128 (Mo. 1916); Steele Hopkins & Miller Co. v. Miller, 110 N.E. 648 (Ohio 1915); Scribner v. State, 132 P. 933, 934 (Okla. Crim. Ct. App. 1913); Rasmussen v. Baker, 50 P. 819 (Wyo. 1897).

comments of the delegates in adopting the provision, they were made aware of its purpose in unambiguous language by *A Report to the People of Alaska from the Alaskan Constitutional Convention* which was widely distributed. The report explained the Constitution's treatment of mineral reservations as:

> a direct reflection of Congressional thinking, . . . The Constitution . . . gives flexible treatment to the subject *in order that amendment will not be necessary if Congressional thinking should change.* (emphasis added)[25]

The voters were thus advised that restrictions on alienation of mineral rights could be lifted without the necessity of a constitutional amendment if Congress so permitted. We can envision no more cogent expression of the intent of the drafters and of those voting for ratification of the Constitution.

We are compelled to hold that Art. VIII, Sec. 9 and Art. XII, Sec. 13 do not contain constitutional restraints on alienation of mineral rights. The provisions merely leave the decision as to whether to require such reservations to Congress and the state's legislature. Art. VIII, Sec. 9 and Art. XII, Sec. 13 of the state Constitution thus impose no impediment to an exchange of land authorized by Congress and the state legislature even though the exchange involves a conveyance of mineral rights by the state.

This case, however, is not so simply resolved. Alaskans ratified the Constitution on April 24, 1956, almost three years prior to achieving statehood.[26] The Alaska Statehood Act was signed into law on July 7, 1958. Section 6(i) of the Act states:

> (i) All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the

25. Proposed Constitution for the State of Alaska, A Report to the People of Alaska from the Alaska Constitutional Convention at 3 (College, Alaska 1956). The history and significance of this document is discussed in Fischer, *supra* at 173-74.

26. Alaska became a state on January 3, 1959((Presidential Proclamation of President Eisenhower, January 3, 1959).

> State of Alaska under subsections (a) and (b) of this section are made upon the express conditions that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: *Provided,* That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

The lands to be selected by the state included mineral lands so as to be consistent with the rights granted other states as a result of the School Lands Act of 1927, 43 U.S.C. § 870. The restrictions placed by Congress on alienation of Alaska's lands were of the same import as those set forth in that Act and applicable to the other states.

Sec. 8(b) of the Statehood Act required that an election be held in Alaska submitting to the voters three propositions.[27] We are

27. Alaska Statehood Act Sec. 8(b) provides in part:
(b) At an election designated by proclamation of the Governor of Alaska, which may be the general election held pursuant to subsection (a) of this section, or a Territorial general election, or a special election, there shall be submitted to the electors qualified to vote in said election, for adoption or rejection, by separate ballot on each, the following propositions:
"(1) Shall Alaska immediately be admitted into the Union as a State?
"(2) The boundaries of the State of Alaska shall be as prescribed in the Act of Congress approved ..... and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.
"(3) All provisions of the Act of Congress approved .... reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands

here concerned only with the third proposition which required the consent by the state and its people to provisions of the Alaska Statehood Act

> reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska.

The people of Alaska voted in favor of all three of the propositions at the election held on August 26, 1968.[28] Included in Sec. 8(b) of the Statehood Act, although not in the proposition submitted to the voters, was the provision that in the event that the three propositions were adopted by a majority vote, "the proposed constitution of the proposed State of Alaska . . . shall be deemed amended accordingly". Since the propositions were adopted, it is plaintiffs' position that the Alaska Constitution was thereby amended to include "the terms or conditions of the grants of land" set forth in Sec. 6(i) of the Statehood Act.

The Constitution of the State of Alaska, however, provides only two means for its amendment. Art. XIII, Sec. 1 authorizes such amendments by a two-third vote of each house of the legislature thereafter approved by a majority vote at the next statewide election. Art. XIII, Sec. 4 provides for amendments by a constitutional convention subject to ratification by the people. There was no state legislature in existence at the time of passage of the Statehod Act, and the Territorial legislature never approved an amendment

---

or other property therein made to the State of Alaska, are consented to fully by said State and its people."

In the event each of the foregoing propositions is adopted at said election by a majority of the legal votes cast on said submission, the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly. In the event any one of the foregoing propositions is not adopted at said election by a majority of the legal votes cast on said submission, the provisions of this Act shall thereupon cease to be effective.

28. C. Naske, An Interpretative History of Alaskan Statehood, at 167.

incorporating the restrictions of Sec. 6(i) of the Statehood Act into the Alaska Constitution. Nor was any constitutional convention called to act on the matter. The Alaska Constitution may not be amended by popular vote alone, without prior action by either the legislature or a constitutional convention. It is thus clear that the Alaska Constitution was not amended in the only two ways permitted by that document. It is further beyond dispute that the United States Congress has no power to amend a state's constitution.[29]

The dissent would hold that the voters approved an amendment to the Constitution, although neither the language nor the fact of this amendment were indicated on the ballot. If Congress had desired that the state Constitution contain restrictions on alienation, the enabling act could have required that an appropriate amendment be enacted.

The dissent also contends that Art. XIII, Secs. 1 and 4 of the Alaska Constitution specifying means of amendment remained inoperative until Alaska was admitted into the Union. The same may be said for the entire Constitution. Just as the Constitution was agreed upon and adopted prior to Alaska's admission to the Union, amendments could have been enacted in accordance with its provisions had Congress so required. The amendments, like the Constitution itself, would become effective upon Alaska's admission to the Union. Congress, however, imposed no such condition to admission. It seems self-evident that the Congressional restraints on alienation were intended by Congress to be binding only to the extent required by that body. This also was the intent of those who agreed upon and adopted the Alaska Constitution by vote.

---

29. *See* Coyle v. Smith, 221 U.S. 559, 568-71, 55 L. Ed. 853, 858-59 (1911); Permoli v. Municipality No. 1, 44 U.S. (3 How.) 589, 609-10, 11 L. Ed. 739, 748 (1845); Boeing Aircraft Co. v. Reconstruction Finance Corp., 171 P.2d 838 at 842. Congress is limited to the powers enumerated in the Constitution and cannot invade an area of sovereignity reserved exclusively to the states by tampering with "essentially and peculiarly state powers". National League of Cities v. Usery, 44 U.S.L.W. 4974 (U.S. June 24, 1976).

Apparently realizing the flaws in an argument that the Constitution was amended by the vote approving the propositions set forth in Sec. 8(b) of the Statehood Act, plaintiffs rely on the creation of a compact between the future state and Congress. A compact is merely an agreement or contract usually applied with reference to nations or sovereign states.[30] The plaintiffs argue that such a compact arose as the result of adoption of the Alaska Constitution's provisions of Art. VIII, Sec. 9 and Art. XII, Sec. 13 agreeing that all sales or grants of lands be subject to such reservations as Congress shall require and the federal imposition of restrictions on alienation of mineral rights subsequently set forth in Sec. 6(i) of the Statehood Act.

There is authority to the effect that for a compact to arise, there must be identical provisions in the state constitution and the federal act.[31] While a comparison of the provisions in the two documents may be of assistance to determine whether an agreement was reached, we do not rely on any such narrow doctrine as would require identical language. Here it is clear that Alaskans by ratification of the Constitution including the provisions of Art. VIII, Sec. 9 and Art. XII, Sec. 13; and again, separately, by approving proposition 3 of Sec. 8(b) of the Statehood Act, agreed to be bound by restrictions on alienability of land imposed by the federal government. This constituted a compact. The real issue is whether after Congress has given its consent to a change in terms, the compact may be altered only by a state constitutional amendment.

Prior compacts between most new states other than Alaska and Congress arose differently because the federal enabling acts were written prior to the constitutions of the new states.[32] As a result,

30. Black's Law Dictionary at 351 (4th ed. rev. 1957).

31. Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901, 908-09 (Alaska 1961).

32. Hawaii's Constitution was drafted prior to the act providing for its admission to the Union, Public Law 86-3, March 18, 1959. There appears to be no Hawaii decision pertaining to its compact with the United States.

the constitutions were able to mirror the terms of the enabling act. Even under those circumstances where the provisions of the federal enabling act were actually incorporated into the state constitution, it has been held that the compact so reached may be altered without the necessity of a state constitutional amendment.

The leading case is *Boeing Aircraft Co. v. Reconstruction Finance Corp.*, 171 P.2d 838 (Wash. 1946), *appeal dismissed, sub nom. Boeing Aircraft Co. v. King County, Washington,* 330 U.S. 803, 91 L. Ed. 1262 (1947). The Washington enabling act required that the state constitutional convention provide

> by ordinances irrevocable without the consent of the United States, and the people of said states . . . that no taxes shall be imposed by the state(s) on lands or property therein belonging to or which may hereafter be purchased by the United States, or reserved for its use.[33]

The Constitution of the State of Washington, Art. XXVI provided.

> Compact With the United States—The following ordinance shall be irrevocable without the consent of the United States and the people of this state:—
>
> "* * * that no taxes shall be imposed by the state on lands or property therein belonging to or which may be hereafter purchased by the United States or reserved for use: * * *."[34]

Thereafter, the United States authorized state taxation of property owned by the Reconstruction Finance Corporation to the same extent according to its value, as other real property is taxed.[35] The Washington Legislature passed a law authorizing taxation of the property of the United States and its agencies "whenever

33. Act of February 22, 1889 (Session II, Ch. 180), 25 Stat. 676.

34. 171 P.2d at 841.

35. Boeing Aircraft Co. v. Reconstruction Finance Corp., *supra* at 840-41.

and in such manner as such taxation may be authorized or permitted under the laws of the United States".[36]

A declaratory judgment action was commenced contesting the validity of the county taxes imposed on the Reconstruction Finance Corporation property which had been leased to Boeing Aircraft Co. Under the terms of the lease, Boeing was required to pay any taxes lawfully imposed on the property.

At issue was whether, without a state constitutional amendment, the Washington Legislature could authorize the taxation of United States' property. The compact between the United States and Washington prohibited such taxation, and that prohibition, unlike the restrictions on alienation of land here in dispute, was specifically written into the Washington Constitution. Again unlike the Alaskan situation, both the federal act and the state constitutional provisions stated that the prohibition against taxation was irrevocable "without the consent of the United States *and the people of this state*" (emphasis added).

The Washington Supreme Court first looked to the intent of the framers of its constitution and that of Congress. The court quoted with approval "that the polestar in the construction of Constitutions is the intention of the makers and adopters".[37] It concluded that:

> It is an inescapable conclusion that the framers of the constitution and the Congress of the United States intended that any agreement allowing Federal property to be taxed, would be arrived at by the passage of laws by the Congress of the United States and the legislature of the state of Washington. It is clearly apparent that the makers of our constitution had in mind that the people would speak through the mouth of the legislature in agreeing that the Federal property might be taxed.[38]

36. Rem. Supp. 1945 Sec. 11150-1.
37. 171 P.2d at 843, *quoting* 11 Am. Jur., Constitutional Law § 61.
38. *Id.*

If confronted with the issue facing the Washington court, we would have considerable difficulty in reaching the same conclusion. The exemption was expressly set forth in the state constitution which provided that it was irrevocable without the consent of the United States and the "people" of the state. It is clear, however, that the provision was inserted in the state constitution solely for the benefit of the federal government. There thus is compelling reason to believe that the framers of the state constitution and those ratifying it intended to be free of that restriction as soon as relieved of its burdens by Congress. Thus, the Washington Supreme Court in *Boeing, supra,* was probably following the intent of Congress and the state when they entered into the compact. The case has been followed without criticism.[39]

The dissent refers to *State ex rel. Interstate Stream Comm'n v. Reynolds,* 378 P.2d 622 (N.M. 1963). The enabling act for New Mexico provided that certain lands be held in trust, and required that funds from those lands be subject to the same trust. By Art. XXI, Sec. 9 of the New Mexico Constitution, express consent was given to that provision. A question arose as to whether such trust funds were being used for the trust purposes. The New Mexico court found that the funds were being used for the designated purposes. The decision contains language to the effect that the enabling act provisions were incorporated into the state constitution. The case is readily distinguishable. First, the New Mexico Constitution was enacted after the enabling act and expressly consented to known provisions. Alaska's Constitu-

39. *See* State v. Paul, 337 P.2d 33 (Wash. 1959) (constitutional amendment unnecessary to assert jurisdiction over Indians, despite express constitutional disclaimer, where Congress consents); *accord,* Quinault Tribe of Indians v. Gallagher, 368 F.2d 648, 657 (9th Cir. 1966), *cert. denied,* 387 U.S. 907 (1976) (relying on Washington law); Tonasket v. State, 525 P.2d 744, 752 (Wash. 1974); Makah Indian Tribe v. State, 457 P.2d 590, 593 (Wash. 1969), *appeal dismissed,* 397 U.S. 316 (1970). *See also State ex rel.* McDonald v. District Ct. of 4th J.D., 496 P.2d 78, 82 (Mont. 1972) (relying on *Paul*).

tion was enacted prior to the enactment of the enabling act, and thus incorporated no specific provisions. Second, the New Mexico court did not address the question here presented as it held that the funds were appropriated for the trust purposes. To be comparable to the Alaska case, Congress would have had to grant an express alteration of its earlier restrictions on the use of the funds which would thereafter have been appropriated for such altered purposes. That was the exact question involved in *Boeing*, but no such issue was presented to the New Mexico court.

The reasons for permitting changes in the Alaskan compact without the necessity of a constitutional amendment are much more compelling than in the *Boeing* case. The Alaska Constitution did not contain any specific restrictions on alienation but merely a consent to be bound by such reservations as would be required by Congress. A strong argument may therefore be made that all that was required to release the restrictions was Congressional consent. Once this consent was secured, the Alaska Legislature, in agreeing to the disposition of the land and mineral rights, was not violating any specific provision of the Alaska Constitution.

In *Starr v. Hagglund*, 374 P.2d 316 (Alaska 1962), a divided Alaska Supreme Court approved a change of the provision in the Constitution designating Juneau as the capital by statute or initiative, rather than by constitutional amendment. The decision was based on the fact that the provision was in an article of the constitution entitled "Schedule of Transitional Measures", and on certain remarks made by the Chairman of the Committee on Ordinances and Transitional Measures. Thus, although the capital provision appeared in the body of the Constitution, it was permitted to be changed without the necessity of a constitutional amendment.

We here do not go that far since there is no provision in the Alaska Constitution restricting alienability of land. Providing

for such restrictions is left by that document to the determination of Congress and the state. We hold that a constitutional amendment is not mandated, and that legislative approval of the Cook Inlet land exchange is sufficient once Congress consented to lifting the restrictions imposed against alienation of mineral rights.[40]

III. LOCAL AND SPECIAL LEGISLATION

Plaintiffs argue that Chapter 19, SLA 1976 violates the constitutional prohibition on local and special legislation, Art. II, Sec. 19,[41] because it affects only a limited geographical region of the state. Additionally, they claim that the bill is invalid on the ground that it waives the provisions of AS 38.05.125 which restrict the state's right to alienate minerals and AS 38.95.060(c) which authorizes exchanges of land with Native corporations for equal value.[42] We find no merit in these contentions and hold that Chapter 19, SLA 1976 is a general act, addressing a matter which is unique, but of statewide concern. A valid general act may effectively repeal or supercede provisions of prior acts such as AS 38.05.125 and AS 38.95.060.

The test to be employed in determining whether legislation contravenes Art. II, Sec. 19 is substantially the same as that applicable to nonsuspect classifications challenged as violative

---

40. Plaintiffs present policy arguments as to why they believe this exchange is against the public interest. These argments, however, were properly presented to the Alaska Public Land Commission and the legislature. Since we find no constitutional infirmity, the political decision as to the wisdom of the exchange is not one for the courts. *See* DeArmond v. Alaska State Development Corp., 376 P.2d 717, 721 (Alaska 1962); Coleman v. Miller, 307 U.S. 433, 454-55, 83 L.Ed. 1385, 1396-97 (1939).

41. Alaska Constitution, Art. II, Sec. 19 provides in part:

> *Local or Special Act.* The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination.

42. Plaintiffs also claim that Chapter 19, SLA 1976 unconstitutionally discriminates in favor of a particular Native corporation as against all other grantees of state land and, in particular, as against all other Native corporations. Although the question of standing was not specifically argued in connection with this claim, we note that Mr. Lewis and Mr.

of equal protection.[43] Examining both the legislative goals and the means used to advance them, we must determine whether the legislation bears a "fair and substantial relationship" to legitimate purposes.[44] If this standard is satisfied, the bill will not be invalid because of incidental local or private advantages.[45] Legislation need not operate evenly in all parts of the state to avoid being classified as local or special.[46]

Ample evidence in the record supports our conclusion that Chapter 19, SLA 1976 is designed to facilitate statewide land use management and to resolve a host of pressing legal issues arising in the context of ANCSA.[47] The conflict between Cook and the government concerning the adequacy of withdrawals for Native selection implicated both future state selections and existing state patents. Clouds on title could have resulted in protracted

Galliett lack the requisite adversity to raise this argument. Plaintiffs have not alleged that they are members of a Native corporation or grantees of state land, nor do they explain why any of those allegedly discriminated against by the bill are unable to vindicate their own rights.

43. Boucher v. Engstrom, 528 P.2d 456, 463 n.25 (Alaska 1974).

44. Isakson v. Rickey, 550 P.2d 359, 361-63 (Alaska 1976). Our previous decisions concerning local and special legislation—Abrams v. State, 534 P.2d 91 (Alaska 1975); Boucher v. Engstrom, *supra;* and Walters v. Cease, 394 P.2d 670 (Alaska 1964)—were decided before we adopted the more stringent equal protection test set forth in *Isakson.* We extend our dicta in Boucher v. Engstrom, *supra,* and find the *Isakson* standard applicable here.

45. Suber v. Alaska State Bond Committee, 414 P.2d 546, 552 (Alaska 1966) (adjustment plan to aid mortgagors and mortgagees of homes damaged in earthquake not violative of equal protection).

46. Boucher v. Engstrom, *supra* at 463; Abrams v. State, *supra* at 94.

47. Under the traditional rational basis test, we refused to set aside the legislative findings unless they clearly lacked any reasonable basis in fact. *See, e.g.,* DeArmond v. Alaska State Development Corp., 376 P.2d 717, 721 (Alaska 1962), cited in Ault v. Alaska State Mortgage Ass'n, 387 P.2d 698, 701 (Alaska 1963). Under the new equal protection standard adopted in *Isakson, supra* at 362, we will not "hypothesize legislation". The voluminous documentary evidence in the record here precludes the need for conjecture.

litigation and impaired effective planning for a variety of state needs.

In a report prepared for use by the House and Senate Committees on Natural Resources in evaluating Chapter 19, SLA 1976[48] the Federal-State Land Planning Commission summarized these problems and considered a variety of alternative resolutions. They concluded that the land exchange represented the most desirable and advantageous solution to the multiple issues confronting the state as a whole. The exchange is a response to a unique federal offer which affords the state the opportunity to secure, free of challenge, the vast bulk of lands previously patented to it. In addition, it permits state selection of additional lands which were previously unavailable under the statehood act, including certain key public purpose tracts in the Anchorage area.

Plaintiffs raise opposing policy arguments. They consider the exchange to be a "give away" of the state's heritage. Absent a constitutional infirmity, however, the balancing of such arguments is peculiarly a legislative function. As far as the constitutional issue is concerned, we find a "fair and substantial relationship" between permissible legislative purposes and the means used to advance them.[49]

Our previous decisions present no bar to our holding here. Plaintiffs point to *Abrams, supra,* as determinative of the instant case. There we considered a statute providing for the creation of an Eagle River-Chugiak Borough in a manner different from that set forth in a comprehensive state scheme for incorporating new boroughs. Those seeking to uphold the statute in *Abrams,* however, failed to offer evidence indicating any valid reason for

48. *See* Cook Inlet Report, Report of Federal-State Land Use Planning Commission (Anchorage, March 6, 1976).

49. *See also* Boucher v. Engstrom, *supra,* where we found that statewide interest in the location of a new capital was sufficient to validate an initiative relocation proposal which excluded Fairbanks and Anchorage as potential sites.

special incorporation procedures, applicable only to the proposed new borough.[50] By contrast, the problems of the Cook Inlet region and their relationship to broader state concerns present a unique situation calling for unique treatment. No similar set of facts is known or expected to exist, and the legislation is thus as broad as the conditions to which it responds.[51] We therefore hold that Chapter 19, SLA 1976 is a general legislative treatment of complex problems of pressing importance and of statewide concern.

In summary, we hold that the plaintiffs have standing to contest the validity of Chapter 19, SLA 1976 under the facts of this case. We further hold that Chapter 19, SLA 1976 is constitutional since there is no constitutional prohibition against alienation of mineral rights which precludes this land exchange, and the act does not conflict with constitutional prohibitions against special or local legislation.

The injunction issued in the superior court is therefore vacated, and the declaratory judgment of the superior court reversed.

RABINOWITZ, Justice, with whom Erwin, Justice, joins dissenting in part.

I am in agreement with the majority's resolution of the standing and local or special legislation issues, as well as the majority's conclusion that it is unnecessary to pass upon the contention that the United States is an indispensable party to this litigation. My disagreement with the majority lies in the court's disposition of the question of whether the proposed transfer of mineral rights is constitutionally permissible.

---

50. For similar reasons, we found the borough incorporation procedures at issue in Walters v. Cease, 394 P.2d 670 (Alaska 1964), to be local and special legislation.

51. For other jurisdictions which have upheld laws responding to unique situations in the context of similar constitutional challenges, *see e.g.*, State v. Reynolds, 378 P.2d 622 at 626 (N.M. 1963); County of Cameron v. Wilson, 326 S.W.2d 162, 165 (Tex. 1959); Berry v. Milliken, 109 S.E.2d 354, 356 (S.C. 1959); State v. Hodgson, 326 P.2d 752, 758 (Kan. 1958).

Before explaining why I find I cannot agree with the court's holdings that in the particular circumstances of this case a constitutional amendment is not mandated and that "legislative approval of the Cook Inlet land exchange is sufficient once Congress consented to lifting the restrictions imposed against alienation of mineral rights," I think it appropriate to clarify my position in relation to several rather peripheral aspects of this appeal.

First, although I reach the same legal conclusion that appellees would have the court reach in this appeal, I cannot subscribe to appellees' assertions of wrongdoing on the part of members of the executive branch of Alaska's government. In this regard I think portions of appellees' brief embody rather intemperate and reckless accusations. More to the point, I have assumed for purposes of my analysis of the constitutional question here that all parties involved in this historic proposed land exchange have acted in utmost good faith and that the executive branch of Alaska's government has obtained exchange terms which are in fact entirely fair in relation to the interests of the people of the State of Alaska. Secondly, I am in full accord with the attempts on the part of both the federal and state governments to work out an equitable solution with Cook Inlet Region, Inc. in order to effectuate the provisions of the Alaska Native Claims Settlement Act. For it is my belief that it is essential that equitable settlement implementations be achieved of the respective land claims of Native Alaskans. Nevertheless, Alaska's Constitution has vested the judicial power of the state in the Supreme Court of Alaska.[1] A concomitant of this power is the necessity of interpreting Alaska's Constitution, when called upon, in accordance with neutral principles of constitutional analysis. For regard-

---

1. Article IV, section 1 of the Alaska Constitution reads in part: "The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature."

less of whom the particular litigants may be, Alaska's Constitution provides "that all persons are equal and entitled to equal rights, opportunities, and protection under the law."[2] Thus, with these preliminary matters in mind, I now turn to the question which the majority has termed "The Constitutionality of the Proposed Transfer of Mineral Rights."

Article IV, section 3 of the Constitution of the United States provides in part that "New states may be admitted by the Congress into this Union . . . ."[3] As the majority notes, the sequential procedural stages prior to the actual admission of the Territory of Alaska into the Union are unusual. Unlike the sequencing of events in most previous admissions, Alaska's Constitution was adopted by the constitutional convention and ratified by the people of the Territory of Alaska prior to the enactment by the United States Congress of enabling legislation. In *Metlakatla Indian Community, Annette Island Reserve v. Egan,* this court viewed the pre-statehood efforts on the part of the Territory of Alaska in the following manner: "This constitution served as a basis for subsequent petitions to Congress for Statehood and can be considered as an offer to accept the privileges and responsibilities of that status in accordance with its terms."[4] Keeping in mind the power of Congress to admit new states into the Union and the unusual circumstance that the Territory of Alaska adopted a proposed state constitution before Congress had passed enabling legislation, I now address the extremely difficult question pre-

2. Article I, section 1, Alaska Constitution.

3. Article IV, section 4 of the Constitution of the United States further provides that: "The United States shall guarantee to every state in this Union a republican form of government . . . ."

4. Metlakatla Indian Community Annette Island Reserve v. Egan, 362 P.2d 901, at 908-09 (Alaska 1961), *rev'd in part on other grounds, sub. nom.* Metlakatla Indian Community v. Egan, 369 U.S. 45, 7 L. Ed. 2d 562 (1962), *aff'd in part on other grounds, sub nom.* Organized Village of Kake v. Egan, 369 U.S. 60, 7 L. Ed. 2d 573 (1962).

sented in determining the legal effect of the provisions of the Statehood Act and Alaska Constitution which are at issue in this appeal.

In *Coyle v. Smith,* 221 U.S. 559, 55 L. Ed. 853 (1911), the Supreme Court of the United States was faced with a question involving the ability of a state to act in contradiction to relevant provisions of its enabling act. The Oklahoma Enabling Act contained numerous restrictions, among them, that the state capital was to be temporarily located in Guthrie. The enabling act contained two types of restrictions, those required to be inserted in the state constitution and those which the Oklahoma constitutional convention was required to accept by "ordinance irrevocable." The state capital provision was of the latter type. In upholding the Oklahoma legislature's power to transfer the capital to Oklahoma City, the Supreme Court established three subdivisions with respect to restrictions insisted upon by Congress in enabling legislation. First, are conditions which are fulfilled by the admission of the state; second are "compacts or affirmative legislation intended to operate *in futuro,* which are within the scope of the conceded powers of Congress over the subject";[5] third, are the compacts which restrict the powers of a new state in matters that would otherwise be exclusively within the sphere of state power. The Supreme Court stated:

> As to requirements in such enabling acts as relate only to the contents of the Constitution for the proposed new state, little need to be said. The constitutional provision concerning the admission of new states is not a mandate, but a power to be exercised with discretion. From this alone it would follow that Congress may require, under penalty of denying admission, that the organic law of a new state at the time of admission shall be such as to meet its approval. A Constitution thus supervised by Congress would, after all,

5. Coyle v. Smith, 221 U.S. 559, 568, 55 L. Ed. 853, 858 (1911).

be a Constitution of a state, and as such subject to alteration and amendment by the state after admission. Its force would be that of a state Constitution, and not that of an act of Congress.[6]

The Supreme Court then went on to hold that so far as Congress was attempting to deprive the state of any power which was constitutionally possessed by other states, the attempt was invalid. The Court stated:

> The plain deduction from this case is that when a new state is admitted into the Union, it is so admitted with all of the powers of sovereignty and jurisdiction which pertain to the original states, and that such powers may not be constitutionally diminished, impaired, or shorn away by any conditions, compacts, or stipulations embraced in the act under which the new state came into the Union, which would not be valid and effectual if the subject of congressional legislation after admission.[7]

Thus, it is clear that Congress is empowered to insist on certain inclusions in the particular state's constitution as a prerequisite to admission; what is forbidden to Congress is regulation which impairs "the essence of the power of Statehood."[8] In *Coyle v. Smith* the Supreme Court concluded that the restriction on moving the capital of Oklahoma could be ignored by the new state since it related to a power which was traditionally within the state's ambit of powers.

As I analyze the issue, the restrictions contained in section 6(i) of the Statehood Act on the State of Alaska's power to alienate mineral interests in state lands comes within the *Coyle* category relating to constitutional conditions imposed as a prerequisite to admission. In the usual case in which are enabling act was passed

6. *Id.*

7. *Id.* at 573, 55 L. Ed. at 860.

8. Interior Airways, Inc. v. Wien Alaska Airlines, Inc., 188 F. Supp. 107, 112 (D. Alaska 1960).

prior to the meeting of the state's constitutional convention, Congress was able to insist on the inclusion of various provisions in the state's proposed constitution.[9] Inasmuch as Alaska's constitu-

9. Professor Westel Willoughby discusses the subject of admissions of new states as follows:

> The Constitution, without distinguishing between the original and new States, defines the political privileges which the States are to enjoy, and declares that all powers not granted to the United States shall be considered as reserved 'to the States.' From this it almost irresistibly follows that Congress has not the right to provide that certain members of the Union, possessing full statehood, shall have their constitutional competences less than those of their sister States. According to this, then, though Congress may exact of Territories whatever conditions it sees fit as requirements precedent to their admission as States, when admitted as such, it cannot deny to them any of the privileges and immunities which the other Commonwealths enjoy.
>
> The principle of the equality of the States had its origin before the adoption of the Constitution itself. In the acts of cession by the several States through which the old Confederacy obtained the control of the Northwest Territory, it was provided that from this vast area new States should, from time to time, be organized, which should be admitted to the Confederacy, with the same sovereign rights enjoyed by other States.
>
> The famous Northwest Ordinance of 1787, reenacted by the Congress of the United States in 1789, after laying down the general conditions upon which statehood was to be accorded, declared that the States, so admitted, should be 'on an equal footing with the original States in all respects whatever.'
>
> Notwithstanding, however, this requirement of equality, Congress at an early date began the practice of exacting from would-be States various promises by the terms of which they were to hold themselves bound after their admission to the Union and until Congress should release them. Thus, for example, beginning in 1802 with Ohio the first State formed from the Northwest Territory, it was demanded by Congress that that State, when admitted, should pass an ordinance, irrevocable without the consent of Congress, not to tax for five years all public lands sold by the United States; and a requirement substantially similar was demanded of many of the States later formed. When Missouri was admitted in 1821 it was required to declare that its Constitution should never be so construed as to permit its legislature to pass a law excluding citizens of other States from the enjoyment of any of the privileges and immunities granted them by the Federal Constitution. (footnote omitted)

1 W. Willoughby, The Constitutional Law of the United States 310-11 (2d ed. 1929).

tional convention was held long before passage by Congress of enabling legislation, Congress was unable to exercise its power to insist that the proposed constitution contain specific provisions. However, it did insist that the people of the proposed State of Alaska adopt, among other explicit restrictions and conditions, the restrictions contained in section 6(i) of the Statehood Act, and that upon passage by the people, the proposed constitution of the State of Alaska would be deemed amended. More particularly, section 6(i) of the Alaska Statehood Act provides in part that:

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express conditions that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same.

Section 8(b) of the Statehood Act required that three propositions be submitted to the qualified voters in the Territory of Alaska. In the event each of the three propositions was adopted by a majority of the electorate, then

> . . . the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly.[10]

Of particular significance is proposition (3) which was set forth in section 8(b) of the Alaska Statehood Act. This proposition required, as a prerequisite to the territory's admission into the Union, that a majority of the qualified electorate consent to

---

10. Section 8(b) of the Statehood Act further stipulated that:
> In the event any one of the [three] foregoing propositions is not adopted at said election by a majority of the legal votes cast on said submission, the provisions of this Act shall thereupon cease to be effective.

> [a]ll provisions of the [statehood] Act . . . reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people.

In my view it is not possible to draw a viable distinction between the procedural mechanism employed by Congress in the case of Alaska's admission and the power that Congress has exercised over usual admissions in the past. For I do not discern any difference between the power to declare a proposed constitution of a proposed state amended as a prerequisite to admission and the power to insist on particular constitutional provisions as a prerequisite to admission. In my view, it is a logical deduction from the usual admission sequence that had Congress first passed an enabling act and then the Territory of Alaska had held its constitutional convention, the proposed constitution would have contained the restriction against alienation of mineral resources. If the proposed constituiton lacked such a provision, Congress would not have admitted Alaska into the Union.

Thus, I reach the conclusion that the restraint on alienation of mineral resources provided by section 6(i) of the Alaska Statehood Act became part of the Constitution of the State of Alaska by virtue of the previously mentioned language of section 8(b) of the Alaska Statehood Act and the electorate's favorable vote upon proposition (3).[11] In my view, reliance upon the provisions

---

11. I find further support for this conclusion in the provisions of article VIII, section 9 which provide in part, with respect to Alaska's natural resources that:
> Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. *All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources.* (Emphasis added)

Also of significance is the text of article XII, section 13 which states that:
> All provisions of the act admitting Alaska to the Union which reserve rights or powers to the United States, as well as those pre-

of article XIII, section 1 and article XIII, section 4 as providing the exclusive procedural mechanisms for amendment of Alaska's Constitution is inapposite.[12] For at the time the electorate of the Territory of Alaska voted favorably on proposition (3), statehood had not been attained. Thus, the provisions of article XIII, section 1 and article XIII, section 4, in the factual context of the case at bar, remained inoperative until Alaska was admitted into the Union. Nor do I view the conclusion reached here as contrary to the majority's assertion that ". . . the United States Congress has no power to amend a states' constitution." For in the instant case it was within Congress' powers over admission to insist that as a condition or prerequisite to achieving statehood the people of Alaska consent to the restriction on the power of the state to alienate its mineral resources, and that these restraints be deemed additions to the proposed constitution of Alaska. Such requirements on Congress' part are constitutionally permissible, for as the Supreme Court said in *Coyle v. Smith.*

> [a] Constitution thus supervised by Congress would, after all, be a Constitution of a state, and as such subject to alteration and amendment by the state after admission.[13]

---

scribing the terms or conditions of the grants of lands or other property, are consented to fully by the State and its people.

Admittedly section 6(i) of the Statehood Act can be viewed as a response to article VIII, section 9 of Alaska's proposed constitution. Yet Congress, in its enabling legislation, sought approval by the electorate of proposition (3) both as a condition of admission to statehood and as an amendment to the proposed constitution.

12. Article XIII, section 1 provides for amendment of Alaska's Constitution by a two-third vote of each house of the legislature thereafter approved by a majority vote at the next statewide election. Article XIII, section 4 makes provision for constitutional amendment by means of a constitutional convention subject to ratification by the electorate.

13. 221 U.S. 559, 568, 55 L. Ed. 853, 858 (1911).

A brief note should also be made with respect to the majority's position that the people of the proposed State of Alaska adopted the proposed constitution as defined by *A Report to the People of Alaska from the*

Given the conclusion that the prohibitions against alienation of mineral interests in state lands became part of Alaska's Constitution by virtue of the provisions of section 8(b) of the Statehood Act and the people's adoption of proposition (3), the question remains how such restrictions can be lifted. In *State ex rel. Interstate Stream Commission v. Reynolds,* 378 P.2d 622 (N.M. 1963), the New Mexico Supreme Court was faced with a similar problem. In 1898 Congress enacted the Ferguson Act which granted to the territory of New Mexico 500,000 acres of land "for the establishment of permanent water reservoirs for irrigating purposes." All money derived from the trust land was to be placed in a separate fund and its use restricted to the trust purpose. The Enabling Act of 1910, pursuant to which New Mexico became a state, provided in section 10:

> That it is hereby declared that all lands hereby granted, including those which, having been heretofore granted to the said Territory, are hereby expressly transferred and confirmed to the said State, *shall be by the said State held in trust, to be disposed of in whole or in part only in manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions,* and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same. (emphasis added)

Article XXI, section 9 of the New Mexico Constitution provided:

> This state and its people consent to all and singular the provisions of the said act of congress, approved June twentieth, nineteen hundred and ten, concerning the lands by said act granted or confirmed to this state, the terms and condi-

---

Alaska Constitutional Convention. It is obvious that when the people voted on the proposed constitution, they did not have the report before them; they voted only on the proposed constitution, thus leaving the interpretation of the provisions of that document to the proposed judicial branch of government.

> tions upon which said grants and confirmations were made and the means and manner of enforcing such terms and conditions, all in every respect and particular as in said act provided.

The plaintiff brought suit challenging the constitutionality of various state statutes appropriating reservoir trust funds. The New Mexico Supreme Court held that the statutes did not conflict with the Ferguson Act, and stated:

> Section 10 of the Enabling Act became a part of our fundamental law to the same extent as if it had been directly incorporated into the Constitution when thus expressly consented to by the people in Article XXI, Section 9 of the Constitution.[14]

Here, not unlike the court's analysis in *Reynolds,* I have concluded that section 6(i) of the Alaska Statehood Act became part of Alaska's fundamental law. In light of this conclusion, I would hold that Chapter 19, SLA 1976, which purportedly authorized the land exchange in question, is violative of the Alaska Constitutional prohibition against alienation of mineral resources in state lands. The relevant prohibitions against alienation of mineral resources in state lands can only be removed by amendment to the Alaska Constitution. Since Chapter 19, SLA 1976, an ordinary legislative enactment, does not have the status of a constitutional amendment, it is wholly ineffective to lift the alienation restraints in question. Thus, I conclude that the superior court's holding that Chapter 19, SLA 1976 was unconstitutional should be affirmed.

I think it appropriate to briefly express my views concerning the compact theory and the majority's disposition of this argument. My point of departure from the majority's analysis concerning appellees' compact theory centers on whether the compact which

14. The New Mexico Supreme Court had previously held in Lake Arthur Drainage Dist. v. Field, 199 P. 122 (N. M. 1921), that section 10 of the Enabling Act was a part of the fundamental law of the state.

was entered into between the future state and Congress could be altered by methods other than an amendment to Alaska's Constitution. For the reasons expressed previously, I again am led to the conclusion that section 6(i) of the Alaska Statehood Act became part of Alaska's fundamental law when it was incorporated into Alaska's Constitution. Once this occurred, the compact between Congress and Alaska could only be altered on Alaska's part by constitutional amendment. Thus the approval given by Alaska's legislature[15] to the Cook Inlet land exchange is constitutionally insufficient, even in light of the fact that Congress expressly affirmed the removal of the restrictions imposed against alienation of mineral interests in the State of Alaska's lands.[16]

I simply cannot accept the state's argument that the words "deemed amended accordingly" as used in section 8(c) of the Alaska Statehood Act were

> intended simply to acknowledge and confirm the basic rule of federal supremacy: if any provision of the Alaska Constitution conflicted *directly* and *irreconcilably* with a provision

15. Chapter 19, SLA 1976.

16. I believe that the majority's reliance on Boeing Aircraft Co. v. Reconstruction Finance Corp., 171 P.2d 838 (Wash. 1946) is inappropriate. The holding that "the people would speak through the mouth of the legislature in agreeing that Federal property might be taxed," 171 P.2d at 843, was merely an alternative holding which the court characterized as less compelling than its holding that the exemption from taxation was merely declaratory of the law without regard to the provisions of the compact and hence did not bind the state to exempt the federal property when the federal government allowed taxation. It has been noted that events contemporaneous with the *Boeing* decision made the constitutional issue in the case seem less important. *See* Tonasket v. State, 525 P.2d 744, 759 (Wash. 1974) (Utter J., dissenting).

However, even if *Boeing* is accepted as having a valid basis, there are reasons to not extend its rationale to this case. *Boeing* involved a restriction which ran solely to the benefit of the federal government; the people of Washington were benefited by the lifting of the exemption. In the case at bar, the restriction runs in favor of the people of Alaska and represents a limitation on the actions of the state government. In such a circumstance, it would indeed be anomalous to allow the state government to consent to a modification of the compact on behalf of the people.

of the Statehood Act, the former must give way.[17] (emphasis in original)

Here the interests at stake reach beyond federal supremacy or federal control and preservation of mineral interests; for the compact protected the people of Alaska from alienation of their mineral resources without their approval as given by constitutional amendment. Thus, for these additional reasons I would affirm the superior court's holding that Alaska's legislature was not empowered to waive the alienation restraints in question without the express consent of the people of Alaska.

BURKE, Justice, (dissenting in part):

I respectfully dissent on the issue of standing. In my view the record fails to show the kind of individualized harm or direct interest necessary to give plaintiffs standing to maintain their action.

Otherwise, I concur.

---

17. Similarly, I disagree with the state's analysis that the dominant intention in adding this limiting provision subsection 6(i), was merely to retain discretionary federal control over the State's management of mineral in lands known at Statehood time to be chiefly valuable for commercial mineral production.

Appendix C

The Supreme Court of the State of Alaska

File No. 3039

State of Alaska; Governor Jay Hammond; Guy R. Martin, Commissioner of Natural Resources; Michael C. T. Smith, Director of Division of Lands,

Appellants,

and

Cook Inlet Region, Inc.,

Appellant by Intervention,

vs.

J. R. Lewis and Harold H. Galliet, Jr., Citizens and Taxpayers of the State of Alaska,

Appellees.

MANDATE

To: Superior Court of the State of Alaska,

Third Judicial District at Anchorage.

State of Alaska; Governor Jay Hammond; Guy R. Martin, Commissioner of Natural Resources; Michael C. T. Smith, Director of Division of Lands and the Cook Inlet Region, Inc., by intervention, filed appeals from the final judgment of the Superior Court of the Third Judicial District at Anchorage in Civil Action No. 76-1608 entitled, "J. R. LEWIS and HAROLD H. GALLIETT, JR., Citizens and Taxpayers of the State of Alaska, Plaintiffs vs. STATE OF ALASKA; GOVERNOR JAY HAMMOND; GUY R. MARTIN, Commissioner of Natural Resources; MICHAEL C. T. SMITH, Director, Division of Lands, Defendants." The case was heard on October 13, 1976. On January 18, 1977 this court filed its written opinion.

It is ORDERED:

The injunction issued by the Superior Court on July 21, 1976, is vacated and the declaratory judgment of the Superior Court is reversed.

WITNESS the Honorable Robert Boochever, Chief Justice of the Supreme Court, State of Alaska, this 28th day of January, 1977.

CLERK OF SUPREME COURT
DONNA SPRAGG PEGUES
Donna Spragg Pegues

Appendix D

The Supreme Court of the State of Alaska

File No. 3039

State of Alaska; Governor Jay Hammond; Guy R. Martin, Commissioner of Natural Resources; Michael C. T. Smith, Director of Division of Lands,
Appellants,
and
Cook Inlet Region, Inc.,
Appellant by Intervention,
vs.
J. R. Lewis and Harold H. Galliet, Jr., Citizens and Taxpayers of the State of Alaska,
Appellees.

Filed and entered 2-10-77
Supreme Court of the State of Alaska
Donna Spragg Pegues Clerk
By Caroline Hudnall Deputy

NOTICE OF APPEAL

TO: Avrum M. Gross, Attorney General
Attorney for State of Alaska,
Governor Jay Hammond, Guy R. Martin
and Michael C. T. Smith
Allen McGrath, Attorney for
Cook Inlet Region, Inc.

PLEASE TAKE NOTICE that J. R. Lewis and Harold H. Galliet, Jr., citizens and taxpayers of the State of Alaska, plaintiffs below and appellees herein, hereby appeal the Mandate of this Court dated January 28, 1977, vacating the Injunction of the

Superior Court and reversing the Declaratory Judgment of July 21, 1976, to the United States Supreme Court.

This appeal is taken by authority of 28 U.S.C.A.§ 1257(1) and § 1257(2).

DATED at Anchorage, Alaska, this 10th day of February, 1977.

RAYMOND A. NESBETT
Raymond A. Nesbett, Attorney for
J. R. Lewis and Harold H. Galliet, Jr.

Appendix E

Alaska Statehood Act, 72 Stat. 339, (1958), Section 8(b)

(b) At an election designated by proclamation of the Governor of Alaska, which may be the general election held pursuant to subsection (a) of this section, or a Territorial general election, or a special election, there shall be submitted to the electors qualified to vote in said election, for adoption or rejection, by separate ballot on each, the following propositions:

(1) Shall Alaska immediately be admitted into the Union as a State?

(2) The boundaries of the State of Alaska shall be as prescribed in the Act of Congress approved July 7, 1958 and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.

(3) All provisions of the Act of Congress approved July 7, 1958 reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people.

In the event each of the foregoing propositions is adopted at said election by a majority of the legal votes case on said submission, the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly. In the event any one of the foregoing propositions is not adopted at said election by a majority of the legal votes cast on said submission, the provisions of this Act shall thereupon cease to be effective.

The Governor of Alaska is hereby authorized and directed to take such action as may be necessary or appropriate to insure the submission of said propositions to the people. The return of votes case on said propositions shall be made by the election officers directly to the Secretary of Alaska, who shall certify the results of the submission to the Governor. The Governor shall certify the results of said submission, as so ascertained, to the President of the United States.

Appendix F

Chapter 19 SLA 1976

Section 1. *Purpose.* The purpose of this Act is to provide for settlement of certain claims and in so doing to consolidate land ownership among the United States, the Cook Inlet Region, Incorporated, and the State of Alaska in order to facilitate land management, to create land ownership patterns which encourage settlement and development in appropriate areas, to facilitate implementation of the Alaska Native Claims Settlement Act by resolving problems created in context of the Act by the concentration of state patented land selected within the Cook Inlet region and to preclude the need for regional selections that would impact important state interests. The legislature finds the Cook Inlet land exchange is a matter of statewide significance, is in the general public interest, will accomplish the purposes set out and will both settle existing litigation and foreclose possible protracted and devisive litigation.

Section 2. *Approval of Transfer.* The governor is authorized to convey to the United States for exchange with Cook Inlet Region, Incorporated, that land described in Appendix C of the agreement entitled "Terms and Conditions for Land Consolidation and Management in Cook Inlet Area, December 10, 1975" set out in House of Representatives Report No. 74-729, 94th Congress, First Session in accordance with the conditions of that agreement. The conveyance shall pass all the state's right, title and interest in the land, including the mineral subsurface estate notwithstanding any other provisions of law.

Section 3. Waivers. The provision of AS 38.05.125 and 38.95.060(c) do not apply to a conveyance made under this Act.

Section 4. This Act takes effect immediately in accordance with AS 01.10.070(c).